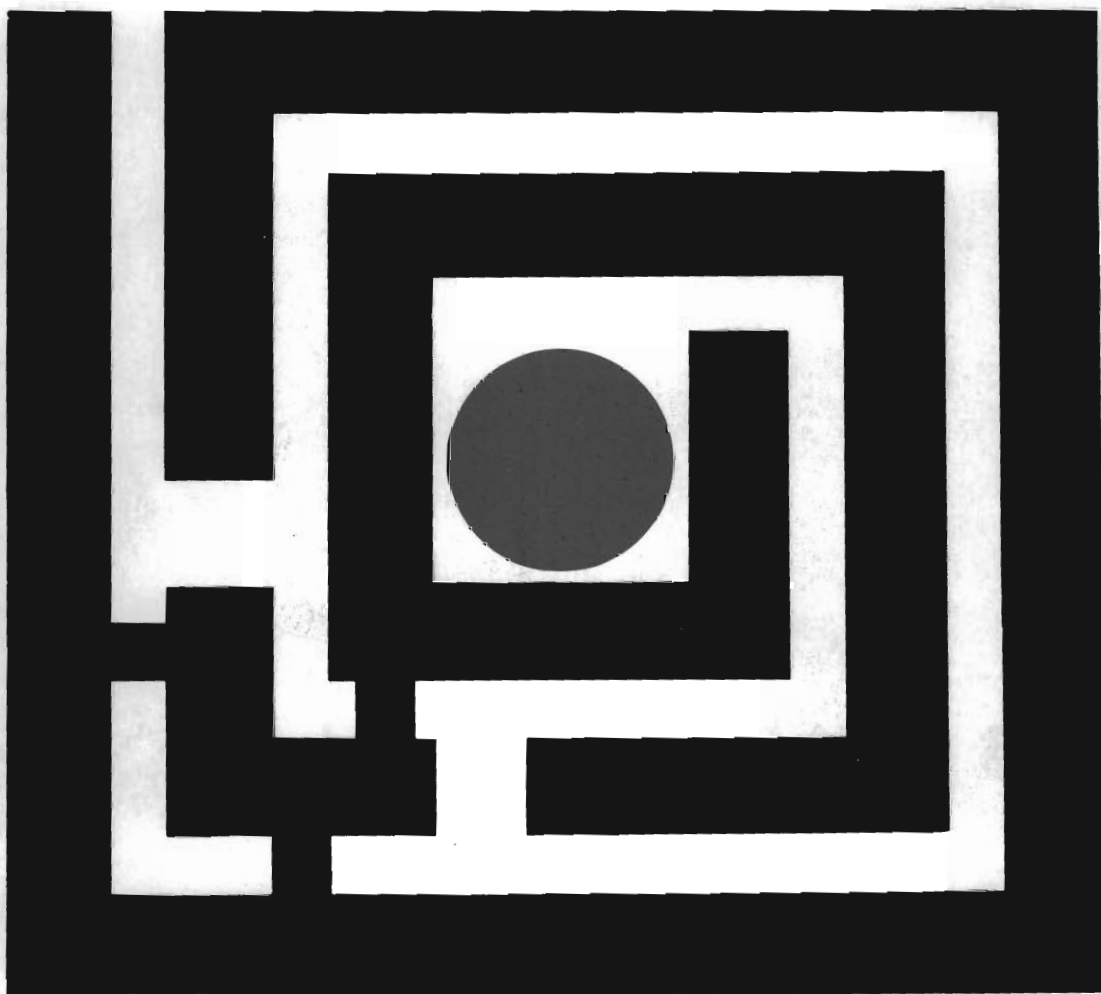


State of New Jersey

Study Commission On Regulatory Efficiency



Roger A. Bodman, Chairman

Report: September 1988

STATE OF NEW JERSEY

REPORT OF THE STUDY COMMISSION ON REGULATORY EFFICIENCY

Roger A. Bodman, Chairman

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EXECUTIVE SUMMARY

Rules and Regulations have proliferated throughout all Agencies within New Jersey State Government. Since 1985 well over 1500 rules and regulations have been adopted. These rules affect all aspects of the lives of New Jersey's citizens and businesses. Many of these rules are vitally necessary to protect the health and safety of New Jersey's citizens and New Jersey's environment. But many are perceived as over regulation.

The process presently in place for adopting rules and regulations is the end result of numerous Legislative and Executive interventions all done with clearly good intent. But the present process allows for the growth of distinctly perceived problem areas. Many rules over time have a compounding effect on the regulated community unforeseen in the rule's initial intent.

In New Jersey it has been estimated that as much as 25-30 percent of the costs of a new house are directly attributable to the costs of complying with unnecessary regulation. New Jersey Builders Association studies show the compounding effects of duplicative and unnecessary rules and regulations.

The Study Commission was given a clearly defined charge in P.L. 1987, c. 130 and the chief sponsor of that law, Assemblyman Robert D. Franks, presented the specific legislative intent to the Commission. In order to meet the time frames and budget constraints mandated for it, the Study Commission undertook a dual work process of small task-focused committees and large information gathering sessions. The work output from these committees and sessions became the foundation for identifying problem areas and developing recommendations.

The Study Commission met on a regular basis to hear testimony and the small task committees met separately. The Study Commission completed its investigations in April of 1988 and began its deliberations on findings and recommendations.

The Study Commission met during May to deliberate and adopt findings, and met during June and July to debate and adopt recommendations.

Recommendations were adopted in July after lengthy discussion and debate. What follows is a summary of recommendations that were developed as a result of deliberations. These recommendations are presented as representing a majority consensus of the Study Commission. Individual members have disagreed with individual recommendations and their comments may be found at the end of this report.

RECOMMENDATION SUMMARY

I. Legislature:

- A regulatory note should be required on all legislation having a significant regulatory impact.
- All rules and regulations sent to the Office of Legislative Services should be forwarded immediately to the appropriate Reference Committee members and staffs.
- The Leadership in both houses should undertake a reduction in the number of Bills introduced in each two-year cycle.
- For reasons of clarifying Legislative Intent, the floor and committee debates of both houses of the Legislature should be electronically taped.
- The Legislature should have the power to publish a finding of disapproval to a rule or regulation in the New Jersey Register.

II. Agency:

- Every agency should publish a regulatory calendar in the New Jersey Register.
- All state rulemaking entities should centralize their rule making and Administrative Procedure Act compliance functions.
- Every agency should adopt and maintain a policy of rule development utilizing proactive advisory committees.

- All agencies should codify within the New Jersey Administrative Code all policies and other requirements imposed upon the regulated communities.
- All Agencies should develop Client Satisfaction and Agency-Performance measurements.
- An Office of Regulatory Services should be established in, but not of, the Department of State, that would have responsibility for all regulatory publication and Administrative Procedure Act oversight.
- The Office of Business Advocacy in the Department of Commerce should be granted new responsibilities and authority.

III. Administrative Procedure Act:

- The present social economic impact statement should be replaced with a new checklist of questions.
- The second notice requirement should include a paid advertisement of notice to insure wider circulation.
- The present public written-comment period should be expanded under certain circumstances.
- The present public-hearing process should be expanded under certain circumstances.
- All pending rule proposals must be published in the New Jersey Register prior to actual proposal.
- When no public comment nor request for public hearing are received during the proposal process, the rule should immediately take effect.

- The Publisher of the New Jersey Register should initiate a task force for the purpose of providing a comprehensive reorganization of the New Jersey Register.

IV. Implementation:

- Private firms should be certified and utilized when necessary in the processing of agency applications.
- The requirements of Executive Order 66 should be legislated.
- The record before the agency head on agency actions under appeal should be limited to that developed before the Administrative Law Judge.
- A standard to be followed by agency heads, similar to that applied by the appellate courts, in reviewing recommended decisions of Administrative Law Judges should be adopted.
- The criteria synthesized by the Supreme Court in the leading case of *Metromedia, Inc. v. Director, Div. of Taxation*, 97 N.J. (1984) should be codified.

Former DCA Commissioner John Renna said in 1984 that, "... in 1972, it took 90 days to get all the necessary approvals and permits to build, today it takes an average of 18 months."

The high cost-impact of regulations is by no means limited to the building industry. It pervades every sector of our economy and professional life. For instance, a medical center located in New Jersey estimates that 10 percent of its workforce is dedicated to doing mandatory paperwork to comply with 172 regulatory boards. This adds to the \$300 - \$500 per day cost of an individual hospital bed.

Another example of regulated expenses in the health services industry are the monthly Peer Reviews of medicare treatments that cost the average hospital thousands of dollars in manpower and diverts resources from many departments. A curious irony of this system is that the PRO reviews the performance of doctors, not hospitals, yet the hospital pays for the monthly reviews. And the hospital is penalized financially if a PRO review decides against a doctor's handling of a case, yet the doctor is paid in full for his "deficient" work.

In this case, at least, the intent of the regulation is meritorious, even if inequitably applied. But imagine the consternation of administrators at JFK Hospital in Edison who were directed by a state inspector during one visit to leave a particular door **open** between two nursing units. The same inspector returned several years later and informed the staff that the same door should be **closed** and locked.

New Jersey hospitals are surveyed, inspected, reviewed, checked, studied, approved or disapproved, or accredited by 70 separate agencies. Hospital compliance with rapid changes in standards and regulations results in annual costs in the millions, which are past on to consumers in higher bills.

It must be acknowledged that complex regulatory systems will always have the potential for creating confusion. The fact is, for the most part existing practices within and between agencies are generally successful in avoiding confusion and disputes. Problems do occur, however, where there is an absence of standardized or uniform methodology for implementing regulations or resolving conflicts.

In the drafting of proposed rules/regulations, agencies sometimes appear to be more concerned with the form rather than the substance of the various social and economic impact statements required by the Administrative Procedure Act. While the Office of Administrative Law ensures the receipt of social and economic impact statements, no agency is responsible for ensuring the accuracy of such information. Some, but not all, agencies may lack consistent policies for applying their rules with regard to time frames, information requests and application/permit information.

Some agencies undertake little if any review and analysis of other similar jurisdictional rules and regulations, either internally or externally, and are, therefore, unable to take into account existing rules enforced by other agencies and the practical effects of their own policies.

There are also instances when regulatory controls are imposed through use of informal policies and agency practices. If such informal practices are not properly brought to the attention of applicants, they can cause loss of time, increased expenditures and a waste of valuable resources.

Then again, vagueness or lack of specificity in the language of some legislation can mask the true legislative intent, resulting in misinterpretation and confusion on the part of an enforcing agency. This situation can be further aggravated if overzealous regulators use their discretionary powers to place their personal imprint on a bill.

The Toxic Catastrophe Prevention Act is an example of what can happen when the precise objectives of a bill are not specifically and explicitly stated. As signed into law, this controversial bill covered and

controlled the use of 12 dangerous substances, and contained a clause that allowed the Department of Environmental Protection to add substances to the list, if they were believed to be dangerous. Armed with this clause, and under intense lobbying pressure from both sides on the issue, agency regulators used their discretionary powers to increase the number of substances from 12 to 124.

It is this lack of consistency or predictability in New Jersey's overall regulatory system (indeed, it exists in every state in the nation) that is so frustrating and confusing to both individuals and corporations, and impacts upon their operations as severely as does the expense of complying with regulations.

The Legislature is more apt to move on to new issues rather than assess the effects and impacts of previously adopted legislation. As long as several thousand bills continue to be introduced in each session of the Legislature, lawmakers will have little choice but to continue their current practice, since their staffs simply are not large enough to give adequate analysis to those bills or regulations that are already law.

Existing Procedures

In general, there are four ways in which rule proposals are originated: 1) a new law may be enacted requiring that a regulation be adopted to implement the act; 2) an agency's technical staff will determine that the marketplace is in need of a regulation to provide clarity on an issue; 3) interested parties outside an agency may request a rule or regulation; and 4) a national organization, may issue a model rule, urging all state insurance departments to adopt it.

Certain guidelines have been established in New Jersey for proposing and adopting a new rule or regulation, and they are set forth in the Administrative Procedure Act (APA). The Office of Administrative Law (OAL) is charged with determining whether the requirements of the APA are being complied with by the particular agency that is proposing the rule.

All proposed rules, or newly enacted ones, are publicized for public awareness in the New Jersey Register, a semi-monthly publication of the OAL. Finally, all state regulations are contained in the 37 volumes and 20,000 pages of the New Jersey Administrative Code, which is maintained and updated by the OAL.

Before proposing any new rule, certain social and economic impact questions are to be answered, including: a) How will the rule affect consumers, businesses and our overall quality of life?, and b) What will be the costs to administer, enforce, monitor and implement the rule?

The Administrative Procedure Act requires, among other things, that agencies submit a proposal notice to the OAL, that a minimum of 30 days be set for receiving comments from the general public, and that an adoption notice be promulgated announcing the effective date of the rule. Also, both the APA and OAL rules allow for agencies to utilize

additional tools in the rulemaking process; these include the pre-proposal process, rule negotiation and public petition for rulemaking activity.

It is obvious that the Administrative Procedure Act and the Office of Administrative Law's guidelines regarding rulemaking were established with rational intent, designed to promote the public good. But even when the procedures are followed to the letter by all the entities involved, the rulemaking process can cause hardship or expense for the parties directly or indirectly affected by new regulations.

The process suffers even more if there is a breakdown in communications or less than adequate vigilance due to negligence or, more likely, lack of manpower. For all of its merits, the system does not delegate direct overall control responsibilities, and the absence of specificity in language, can cause predictable problems.

The New Jersey Register tends to be a highly technical and legal publication that defies easy understanding or perusal by all but the most dedicated and knowledgeable readers. Since it is the primary required means of disseminating information on both proposed and adopted rules, the public remains generally ignorant of the regulatory process, and frequently learns of new regulations only when found in violation. This, of course, adds to the sense of despair and frustration felt by many corporations and small business owners.

For years, the regulated community passively accepted the widening stream of well-intentioned rules that were imposed. However, as acceptance has become ever more costly and confusing, acquiescence has given way to calls for reform of the regulatory process.

Rulemaking Reform

The Coalition for Regulatory Efficiency was formed in 1985 in response to the gathering chorus of voices seeking reassessment and revision in New Jersey's regulatory system, and to serve as a vehicle to create heightened public awareness of the developing crisis. The coalition was comprised of over 75 business, civic and labor organizations, including the NJ Business and Industry Association, the NJ State AFL-CIO, the National Federation of Independent Businesses, the State Chamber of Commerce, the NJ Builders Association and the Society for Environmental Economic Development. Assemblyman Robert D. Franks (Union-Essex) served as chairman of the informal coalition.

"We all felt that New Jersey owes its citizens and business enterprises a network of regulatory systems that are predictable and timely," Franks recalls.

"A person or business which has to comply with a set of regulations has an absolute right to know what those regulations require without having to risk his resources through guesswork," Franks added.

Over a two-year period, the coalition held three public hearings at which business, labor and civic leaders testified regarding their experiences with complying with regulations and the sometimes onerous and burdensome effects of the present regulatory process on both businesses and consumers.

"Those who have the power to issue rules and regulations should be required to determine the likely impact of their rules," Franks adds. "We were looking for an institutional system of checks and balances to ensure that all agencies undertake a proper assessment of their responsibilities."

Assemblyman Franks and Assemblywoman Kathleen Donovan co-sponsored Assembly Bill 2082 of 1986 to create a study commission that would serve as a natural extension of the informal coalition. This enabling legislation, along with companion legislation in the Senate sponsored by Senator William Haines, was drafted with the intent to establish a mechanism to undertake a comprehensive review of the existing regulatory structure and recommend procedures to promote economic improvement and greater efficiency in the rulemaking process.

As drafted, the legislation found that "...certain state government regulations are necessary and proper for the efficient enforcement of the regulatory affairs of state, particularly those which help reduce pollution, improve health and ensure product safety, but that government rules and regulations can often create a costly financial burden on business and individuals."

"Also, that whenever excessive regulation occurs, it causes a profoundly inefficient allocation of resources that often runs counter to the social ends the regulatory process is designed to achieve."

On June 1, 1987, Governor Thomas H. Kean signed A-2082 into law, creating the Study Commission on Regulatory Efficiency (SCORE), consisting of a broad cross-section of the regulated community and state government officials. Seventeen individuals representing various labor, business and civic organizations were appointed to sit on the commission, as well as eleven public members and four legislators.

The commission is charged with recommending administrative change to be used by executive agencies when establishing rules and regulations that interpret state law. Specifically, the commission shall:

- a) Report on present departmental practices regarding establishment of administrative rules and regulations.

- b) Review rule-making procedures implemented in other states for possible application to New Jersey.
- c) Recommend procedural changes to ensure that rules are necessary, straight-forward and non-duplicative, minimize filing and compliance costs, and protect the public interest.
- d) Study the need for a regulatory oversight agency to review selected regulations that affect business activity, and ensure the periodic review of all existing and substantive regulations.

The enabling legislation also contained a built-in sunset provision and a mandated deadline for completion of the commission's task -- no later than 12 months from its organizational meeting.

ACKNOWLEDGEMENTS

The Study Commission finds it impossible to acknowledge by name all the numerous people who aided in the completion of its task. It has taken a successful collaboration of the private and government sectors to bring this monumental work to completion within time constraints and under budget. We do, however, offer our special thanks to the following:

Robert C. Miller who served as the Commission's *Executive Director*. Mr. Miller's attention to the needs and direction of Study Commission kept the Commission's progress moving smoothly forward. Thanks are also due to Mr. S. R. Willcoxon, President of AT&T's Business Markets Group, for the executive loan of Mr. Miller.

Mr. Thomas O. Meehan who served as *Chief of Staff*. Mr. Meehan's ability as a researcher, and his expertise in the methodology of regulatory efficiency provided necessary information for the Commission's deliberations.

Judge Ronald I. Parker, *Director* of the Office of Administrative Law, for providing of office space and administrative support. Also to two members of Staff of the Office of Administrative Law, **Peter Traum** and **Carol Hart**. Both individuals shepherded the Study Commission staff through the highways and by ways of state government.

Albert Porroni, *Executive Director* of the Office of Legislative Services, for the assistance provided to the Study commission that allowed a high degree of continuity in arranging meetings and schedules. Special thanks to **Art Applebaum** and **Mary Smith** for their invaluable assistance.

The many witnesses, both public and state, who provided testimony. the Study Commission acknowledges that this report represents the efforts of numerous individuals who highlighted perceived problem areas and made recommendations.

To the members of the Commission's Executive Committee and to the Subcommittee Chairmen, who collectively supplied the direction necessary to steer the Commission.

The Executive Committee was composed of the following: **Mr. Roger Bodman, Assemblyman Robert Franks, Dr. Rocco Guerrieri, Mr. Steven Picco Esq., Mr. Jon Spinnanger and Mr. Grant Tate.**

The subcommittee chairpersons were: **Senator Richard Zimmer**, legislature and Regulatory Agencies Subcommittee; **Mr. William Verrochi**, Inter-Agency Concerns Subcommittee; **Mr. William Cleary**, Internal Agency Concerns Subcommittee; **Mr. Burton Eichler**, Judicial Standard of Review Subcommittee; **Mr. Jeffery Stoller**, Other States Initiatives Subcommittee; and **Ms. Barbara McConnell** and **Mr. James Morford** who both served as chairpersons of the Public and Regulatory Agencies Subcommittee at different times.

STUDY COMMISSION NARRATIVE REPORT

Rulemaking Dilemma

Government regulation of business in this nation has expanded steadily in complexity, volume and cost over the past three decades. Today, it is estimated that the average business spends some \$19,000* to comply with federal regulations and another \$5,000 to comply with state regulations in a typical state, New Jersey included - - where the number of state regulations affecting business increased by 530 percent from 1978 to 1985.

This proliferation of rules and regulations, no matter how necessary or well-intentioned, is bound to generate duplications, inconsistencies, overlaps and uncertainties. Agencies created to protect the public interest can, in their ardor, often obstruct the regulatory process due to exceedingly lengthy review procedures, the complexity of regulations, and poor working relationships among governmental agencies.

As the number of regulations has increased (some 4,000 have been enacted in New Jersey alone since 1982), so has the confusion, frustrations and expense of those businesses and consumers that must comply with them. The escalating costs of compliance are borne by consumers in higher prices for housing, goods and services, and by the general public in higher taxes.

The increased costs of compliance have severely burdened small firms in particular, and, in a few instances, have actually driven them out of business.

State fire safety regulations, which come from several different sources and are enforced by a number of jurisdictions, offer a clear example of the duplicative and overlapping nature of compliance. The New Jersey Right to Know Law contains certain fire safety provisions

*All facts taken from testimony

that are administered separately by the Departments of Labor, Health and Environmental Protection. Still other safety regulations are controlled by the New Jersey Fire Code and enforced by the Department of Community Affairs. In addition, the fire code grants powers to each of New Jersey's 567 municipalities to expand upon the code to meet their local needs.

The state's housing industry is a monument to the cost-impact of multiple regulations. The Department of Community Affairs reports that the high cost of building and housing is more severe in New Jersey than anywhere else in the nation, with the possible exceptions of Westchester County, New York and the Boston suburbs (and much of that cost is directly attributable to regulations). Some of the regulations and their attendant costs are, of course necessary, but much of the costs result from duplication and overlapping regulatory authority - defects in the rules themselves - and the long delays associated with obtaining required approvals.

Some years ago, an exhaustive study undertaken by Rutgers the State University, concluded that between 25 and 33 percent of the cost of a new home is the result of unnecessary and redundant regulations. This means that for every \$1 billion of new housing built in New Jersey, the home-buying public is paying up to \$300 million in invisible taxes for regulations that neither protect the health and safety of our citizens nor improve the quality of our life or environment.

As an official with the New Jersey Builders Association so graphically relates, the costs of unnecessary and redundant regulations (The CURR Tax) in the real estate sector alone totalled in excess of \$1.5 billion last year, enough money to purchase about 10,000 new homes at current prices - - enough money to house one-third of New Jersey's homeless population in single-family, detached homes.

Work Methods, Assignments and Objectives

At the September 21, 1987 organizational meeting, the full commission, after debate, adopted the small task subcommittee process and directed that the sub-committees would have 90 days in which to report their progress. The full commission also adopted a set of bylaws that mandated an executive committee to be appointed by the chairman to act as a steering committee for the full commission.

In his opening remarks, Chairman Roger Bodman, a former commissioner of both the New Jersey Department of Labor and Transportation, said the commission should not be viewed as a forum for criticizing the practices of any specific executive agency. "Nor is the commission the appropriate forum to discuss the shortcomings of any particular administrative program, except insofar as that program's problems raise generic issues of interest to the commission," continued Chairman Bodman.

"The commission will not be a forum for special interest criticism of particular regulatory programs, but will rather be a mechanism for us to review the regulatory process in the State of New Jersey with an eye towards recommending changes to ensure that the process is as fair, straight-forward and cost effective as possible," Bodman added.

In order to comply with the strict time frames set by A-2082, the chairman and his executive staff met with representatives of the original Coalition for Regulatory Efficiency, the author of the enabling legislation, and the Governor's Office to determine an investigatory process that would meet the letter of the enabling legislation.

A dual work process was developed, incorporating the small task-focused committees and large work-gathering sessions. The two parallel work processes would sequentially link during the first quarter of 1988. The full commission agreed to meet regularly on the first Tuesday of each month.

Six small task committees were designated to carry out the detail work of the Study Commission on Regulatory Efficiency and provide a result-oriented set of responsible recommendations for agency executives to follow in implementing the regulatory process. The subcommittees, chairpersons, and their preliminary objectives were:

- **The Legislature & Regulatory Agencies, *Senator Richard Zimmer***

This subcommittee studied the interaction of legislative and regulatory activity. Of particular interest was the degree to which the wording of legislation plays a part in fostering over-regulation.

- **The Public & Regulatory Agencies, *Barbara McConnell and James Morford***

This subcommittee examined the role, or lack of role, the public plays in the promulgation of regulations. Attention was paid to the public-hearing process and possible alternatives. Emphasis was placed on enhanced public awareness and participation in the whole regulatory process.

- **Inter-Agency Concerns, *William Verrochi***

This subcommittee examined the issues of regulatory duplication and confused jurisdiction between agencies. The question of communications between agencies was considered.

- **Internal Agency Concerns, *William Cleary***

This subcommittee reviewed the Administrative Procedure Act and concerned itself with the manner in which agencies handle regulatory paperwork. An understanding of the decision-making process and flow within regulating agencies was sought.

- **Other State Initiatives, *Jeffery N. Stoller***

This subcommittee examined and evaluated the regulatory reform activities of other states. An attempt was made to incorporate the best and most appropriate of other states' initiatives in the commission's final report and recommendations.

- **Judicial Standard of Review, *Burton Eichler***

This subcommittee examined the need to balance the concern of regulatory efficiency and the existing standard of arbitrary rulemaking against the burdens imposed upon the Judicial interventions by that standard.

The Chairman charged each of the subcommittees to act as clearing-houses for the full commission, to provide an expansion of their study areas, to review the regulatory/rulemaking process, to avoid compiling a simple laundry list of duplicated rules and regulations, to explore the various problems uncovered, and recommend solutions.

"As members of the commission, our goal was to look objectively at the process and recommend change where and when it was necessary," Mr. Bodman says. "Our goal was not to be program-oriented. We had no intention of agency-bashing, nor did we allow a single issue to dominate our discussions."

The subcommittees were given wide latitude and independence in meeting the commitments mandated by SCORE's subcommittee process and the Chairman's original charge. Acting independently, the subcommittees organized, held meetings and investigated their specific areas of study. Time was allowed on full study-commission agendas for brief progress updates. The subcommittees presented verbal summaries to the full commission and prepared a final written report.

Working under the abbreviated one-year time limitation, and using only a limited number of volunteer staff, it was impossible for the commission to quantify its findings or to audit the entire regulatory system and all of the agencies that implement regulations.

Still, the 33 members of the commission took their work very seriously, averaging 25 commissioners at each of the monthly meetings. At all times, the commission sought a broad and balanced approach to its task, including the makeup of the 12 state witnesses and 23 public witnesses that were invited to testify before the full commission.

State witnesses included representatives from the Office of Administrative Law, the Department of Public Advocate, the Department of Community Affairs, the Department of Law and Public Safety, the Department of Health, the Department of Insurance, the Department of Transportation, and the Department of Environmental Protection, the Department of Labor, the Board of Public Utilities, the Department of Treasury, and the Department of Commerce.

An equally broad cross-section of witnesses from the public sector were called upon to testify.

"As chairman, my personal mission was to seek a consensus out of a whole host of divergent views - government, labor, trade association and private industry," Chairman Bodman relates.

"My belief is that if something is to become public policy, it requires broad-based support. The greater the consensus, the better the chance for ultimate enactment of our recommendations. The commission took its work very seriously. We hope the powers that be will give equal and serious consideration to our recommendations," Bodman concluded.

Conclusions

In order for New Jersey to protect its citizens, provide a safe and clean environment, and create an economic atmosphere conducive to job creation and growth, it must maintain a regulatory process which is open, fair, responsive and constructive. The process must strike a balance between relief for the public and efficiency and consistency on the part of executive agencies.

After a year of review and analysis by the Study Commission on Regulatory Efficiency, it has become apparent that there are many agencies and individuals within agencies that perform laudably in New Jersey. The rulemaking process is done with clearly good intentions, and it works surprisingly well much of the time. Still, testimony has uncovered real, or at least perceived, problems with the process that affect more than one agency.

The majority of problems appear to originate, or are most conspicuous, in four particular phases of the rulemaking process: Legislative, Agencies, Administrative Procedure Act, and Implementation. The testimony of expert state and public witnesses repeatedly emphasized:

- That the State Legislature by its actions, and inactions, causes problems in the rule-making/regulatory process.
- That some agencies through the lack of consistent, thorough and reviewed internal procedures, cause problems in the rule-making/regulatory process.
- That the Administrative Procedure Act, and thus the Office of Administrative Law's rules regarding rule-making, while established with rational intent, have still caused problems because of their lack of specificity in language and their failure to designate overall control responsibilities.

- That some agencies fail to adhere to their own adopted rules and regulations concerning time frames, and that members of regulated communities are often deterred from seeking the administrative or legal remedies open to them for fear of further delaying approval time and the resulting economic consequences.

The independent testimony is replete with references to vague language, regulatory duplication, lack of adequate publicity on new rules and poor communication between agencies, and the need to ensure legislative intent and accurate accounting of the costs associated with new regulations.

By mid-March 1988, a clear trend was discernible in the regulatory problems presented through testimony to the full commission. A set of **findings** was drafted by the executive staff for discussion and consideration by the executive committee and the full commission. Also, a method for reaching consensus both on the findings and the recommendations, called the Blind Delphi Consensus Process, was suggested by Executive Director Robert Miller and agreed upon by the executive committee.

Following lengthy deliberations and several revisions of the original draft, the full commission gave final approval to the SCORE findings, sections I and II on May 3rd, and sections III and IV on May 17th.

Using the adopted set of **findings** as a base, Chief of Staff Thomas Meehan undertook the arduous task of developing a consensus set of **recommendations** that could be agreed to by the full commission and presented as a viable, program for reforming New Jersey's regulatory/rule-making system. Working from a list of some 70 recommendations received from the sub-committees, the full commission was able to reach a clear majority of agreement of 24 recommendations that were adopted in July 1988 and comprise its program for reform.

The two dozen recommendations, assembled under four sub-headings, are detailed elsewhere in this report. A major element of the reform program would be creation of an Office of Regulatory Services that would be granted authority and responsibility for all regulatory publication, and oversight of all requirements of the Administrative Procedure Act.

The recommendations set forth in this report culminate a 3 1/2 year effort to improve New Jersey's regulatory climate that began with the formation of an ad hoc coalition, acting on the widely held belief that the exercise of regulatory power had gone beyond reasonable bounds. They are presented with the full realization that New Jersey's existing regulatory system is no worse (and in some cases may be better) than the systems utilized in other states.

The recommendations are presented as a means of enhancing regulatory efficiency in such a way that benefits both regulators and the regulated, and, most of all, the general public.

As the sponsor of the enabling legislation, Assemblyman Robert D. Franks, has said: "For the very first time, this commission brought to the same table those who develop and issue regulations and those who are bound to live with the regulations. Out of that dialogue has emerged this structure for making the regulatory process more efficient, effective and equitable in New Jersey."

The members of the Study Commission on Regulatory Efficiency hope this report is received and acted upon in the spirit in which it is presented.

ATTACHMENTS

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Attachment A

SCORE

FINDINGS

The Study Commission Finds:

I. Legislature:

That the State Legislature by its actions and inactions causes problems in the rule making/regulatory process.

1. Some legislative actions require immediate or short run implementation without full analysis and understanding of the State's prescribed budgetary process and the inherent difficulties with staffing/technical capacities.
2. Some legislative actions mandate executive agency responsibilities without a full understanding of previously mandated legislation, the potential of overlapping mandates and agency jurisdictional missions.
3. Some Legislative actions are problem-specific but are solution general providing unclear and ill-defined legislative intent.
4. Some legislatively-mandated solutions do not adequately consider the potential fiscal and/or regulatory impact of the Legislation on the regulated community and the general public.
5. The Legislature generally does not provide input during the rule making phase and does not undertake systematic oversight or monitoring of regulatory programs after they have been established.

The Study Commission Finds:

II. Agency:

That some but not all agencies, through the lack of consistent, thorough and reviewed internal procedures, cause problems in the rule-making/regulatory process.

1. Some agencies on occasion have had poor communication paths with the Governor's Office, Legislature, other agencies and the regulated communities.
2. Some agencies in the preparation of proposed rules, appear to be concerned with the form but not the substance of the Administrative Procedure Act's required statements; social impact, economic impact and regulatory flexibility.
3. Requirements imposed upon the regulated communities are not always embodied in regulations which are adopted pursuant to the Administrative Procedure Act.
4. Some agencies lack consistent policies for applying their rules with regard to time frames, information requests and application/permit information.
5. Some agencies find it necessary to propose rules without undertaking a full analysis of the effects of: the proposed rule's budgetary implications, the inherent difficulties with staffing/technical capacities, and the affect on the regulated community.
6. There exists no standardized or uniform methodology for resolving conflicting understandings of overlapping responsibilities or assertions.

The Study Commission Finds:

II. Agency (Continued)

7. Agencies sometimes do not provide readily accessible information on the continuing status of applications, from those agencies that require applications.
8. The failure of some agency heads to explain adequately the basis for rejecting the Administrative Law Judge's decisions often leads to a sense of frustration among the affected parties.
9. Some agencies do not consistently review their existing regulations on a continuing basis with a view for reducing or eliminating potentially unnecessary rules and regulations as required by E.O. No. 66 (1978).
10. Agencies sometimes misinterpret legislative intent in promulgating rules and regulations.
11. The existing process does not encourage the development of performance-based regulations when feasible or permitted.

The Study Commission Finds:

III. Administrative Procedure Act:

That the Administrative Procedure Act, and thus the Office of Administrative Law's rules regarding rulemaking, while established with rational intent, have caused problems because of their lack of specificity in language and their failure to designate overall control responsibilities.

1. The New Jersey Register by itself is inadequate as the rule-making/regulatory notification vehicle to the general public.
2. The process presently in place to gather public input into the early stages of the rule-making/regulatory process is viewed as not working by some groups and individuals who represent the regulated community.
3. The lack of clear overall designation of an authority, either individual or organizational, who may either accept or reject departmental submissions as to their Administrative Procedure Act rule making completeness, causes the Administrative Procedure Act rule making requirements to be treated as proforma requirements and completed in a perfunctory manner.
4. The Administrative Procedure Act does not adequately define what is required of the Agencies in their preparation of the social and economic impact statements. Therefore, agencies often fail to provide sufficient economic information and social-impact information that would allow a cost/benefit analysis to be performed and rarely provide their own cost/benefit analysis, when such information and analysis could be reasonably made available.

The Study Commission Finds:

III. Administrative Procedure Act (Continued):

5. The Administrative Procedure Act does not provide for the development of adequate information pertaining to the administrative or budgetary capabilities of the agency proposing the rule for the necessary management of the rule.
6. Some agencies undertake little if any review and analysis of other similar jurisdictional rules and regulations either internally or externally; thereby failing to take into account existing rules enforced by other agencies and the practical effects of their own policies.
7. The existing does not provide a procedure for identifying and minimizing jurisdictional overlap.
8. For those rules that may warrant, the Administrative Procedure Act does not permit an expeditious rule-adoption process for non-emergency situations.
9. The New Jersey Register's failure to publish an adopted rule in its entirety may lead to confusion in the regulated community.
10. The Petition for a rule-making process has not acted as a meaningful adjustment or adoption vehicle.
11. The existing process for the resolution of contested cases permits agency heads to reject, adopt, or modify the Administrative Law Judge's decisions without reference to uniform criteria for the basis for such action.

The Study Commission Finds:

IV. Implementation:

That some agencies fail to adhere to their own adopted rules and regulations concerning time frames, and that fear of aggravating further the approval time table and the resulting economic effects, often deter members of the regulated communities from seeking the administrative or legal remedies open to them.

1. The full impact of rules and regulations are sometimes not completely understood until the implementation of those rules and regulations are attempted. There is no efficient mechanism for fine-tuning existing regulations.
2. Some rules and regulations that require a high degree of technical and educational competence are being enforced by agents of the enforcement authority who lack the required technical/educational training.
3. Some agencies give the perception of lacking a client-service philosophy in their permit issuance/application review organizations. This results in a perception of a lack of timeliness in processing requests, an adversary client/agency relationship and eventual increased pass through costs to the end customer of the regulated community.
4. Some fees are perceived by the regulated community as exceeding the cost of providing the regulated service.
5. In some agencies there exists no effective permit/application tracking vehicle that allows for easy response to requests for status.

Attachment B

SCORE

RECOMMENDATIONS

The Study Commission Recommends:

I. Legislature:

1. The Legislature should adopt a procedure or rule requiring a regulatory note for any bill which would have a significant regulatory impact as determined by the chief budget officer of the Legislature. This note should be developed prior to its passage in the first house on the basis of the following criteria, where applicable:

- a. an annual effect on the New Jersey economy of 5 million dollars or more,
- b. a major increase in costs or prices,
- c. significant adverse effects on competition, employment, investment, productivity, or innovation,
- d. the establishment of, or significant expansion of an existing, state program.

The note should contain at a minimum the following information: (Items that do not apply should have the reason for their non-applicability stated.)

- a. Number of regulated parties.
- b. Whether or not on-site inspections will be necessary.
- c. Quantification of number of forms, impact statements, surveys and all state imposed paperwork on regulated parties.
- d. Will regulated parties be required to maintain records for state use?

The Study Commission Recommends:

I. Legislature (Continued)

- e. Will regulated parties be required to obtain licenses, certifications, or permits? If so, what is a reasonable estimate, in quantifiable terms, of the magnitude of all fees and fines?
- f. Will regulated parties be required to appear in person before the agency?
- g. Will regulated parties be required to disclose information on materials or processes, including trade secrets?
- h. Will regulated parties be required to report certain incidents?
- i. Will regulated parties be required to adhere to either design or performance standards?
- j. Will regulated parties be required to retain lawyers, accountants, engineers or other consultants in order to comply?
- k. Who will be the lead agency to promulgate regulations pursuant to the bill under consideration? Are other agencies involved?
- l. Anticipated initial regulatory impacts, according to the agency applying the regulations.

The Study Commission Recommends:

I. Legislature (Continued)

1. The regulatory note should also contain a review of potential regulatory duplication and jurisdictional overlap, an estimation of the fiscal impact on the regulated community affected by the bill, along with an estimation of the budgetary impact on the regulating agency (total cost of enforcement) including staffing requirements. The note should also contain a clear statement of legislative intent by the bill sponsor.
2. All rules and regulations presently forwarded to Office of Legislative Services as required within the existing Administrative Procedure Act, should immediately be forwarded to the appropriate Legislative Reference Committee members and their corresponding committee staffs by Office of Legislative Services. This recommendation requires amendments to the Administrative Procedure Act.
3. The Commission recommends the leadership in both houses undertake to reduce the number of bills introduced in each two-year cycle. This reduction in the gross number of bills would free existing staff for the necessary analysis of bills having a higher probability of passage. Fewer bills, with greater analysis, (as in Recommendation 1, above) would lead to a lessening of the regulatory burden on the public.
4. In view of the critical importance of the determination of legislative intent to the entire regulatory process, the commission recommends that the floor and committee debate of both Houses of the Legislature should be electronically taped. Copies should be made available to the public on request.

The Study Commission Recommends:

I. Legislature (Continued)

5. The Legislature should have the power to attach a Finding of Disapproval in the New Jersey Register, to particular rules that individual members, through the appropriate standing reference committees, believe violate legislative intent. This Statement would be a non-binding statement of legislative intent expressed only through a Concurrent Resolution of both Houses.

This Recommendation requires a change by law to the Administrative Procedure Act such that the legislature has the right to have its regulatory finding printed as comment in the New Jersey Register with provision for agency rebuttal. It is the hope of the Commission that this process will lead to a dialogue between the agency and the joint committee involved. In any event it is the desire of the Commission that the legislative finding statement be published as an indivisible part of the regulation.

The Study Commission Recommends:

II. Agency:

1. Every Agency should publish a regulatory calendar in the New Jersey Register on a monthly basis, adhering to a schedule established by the New Jersey Register. This regulatory calendar would forecast, for a six month period on a continuing basis, a short description of new or modified rules and regulations. These statements need be no longer than a few lines and should describe the activity, industry or affected population the agency intends to regulate. The Commission recognizes that the effective dates of legislation and the federal origin of some regulation will make absolute adherence to this recommendation difficult in some cases. The Commission's aim, however, is to give the public maximum timely warning before regulation language is actually crafted by the agency so as to allow for pre-publication negotiation with the agency.
2. All state rulemaking entities should centralize their rule making and Administrative Procedure Act compliance functions.
3. Every Agency should adopt and maintain a policy of rule development by consultation. This requires proactive advisory committees, with participation from the public, regulated community and other affected agencies or persons with special expertise. Consultations, in order to be effective, must occur before the Agency drafts regulatory language for publication in the New Jersey Register.
4. Agencies should be required to codify within the New Jersey Administrative Code their agency policies regarding application/permit processing time frames, fee schedules, information requests, internal appeal processes and any other procedural requirements imposed upon the regulated communities.

The Study Commission Recommends:

II. Agency (Continued)

5. Agencies should develop a procedure for measuring the satisfaction of their regulated community with the procedural aspects of their performance, including time frames, response to information requests and the demeanor of agency personnel, and statistics covering the percentage of applications completed within legally-mandated time frames.
6. There should be established the Office of Regulatory Services, in, but not of the Department of State, that would be granted authority and responsibility for all regulatory publication (now done by the Office of Administrative Law) and oversight over all requirements of the Administrative Procedure Act, so that its requirements are fully met prior to publication. The Director of The Office of Regulatory Services would be appointed by, and answer to, the Governor. In order to consolidate final and absolute responsibility for all phases of rule publication, the rule-publication unit of the Office of Administrative Law and its staff should be transferred to the new Office of Regulatory Services. The Office of Regulatory Services will publish regulations only when it finds adequate responses to the checklist questions found in Administrative Procedure Act #1 of this report.

Regulations for re-adoption shall also be scrutinized according to the same criteria.

Final appeal to the decisions of the Director of the Office of Regulatory Services to publish or not will be heard by the Governor.

The Study Commission Recommends:

II. Agency (Continued)

In addition to the publication activities mentioned above, the Office of Regulatory Services will monitor and, where necessary, confer with agency heads to ensure the integrity of the public comment process. The Office of Regulatory Services will retain a liaison staff for the purpose of soliciting public-input, mediating between the public and the agency, calling public hearings and auditing of Administrative Procedure Act requirements and checklists.

7. The Office of Business Advocacy in the Department of Commerce shall be granted statutory authority to:

- a. Continue permit-application tracking once they are contacted by an applicant through final resolution.
- b. Expedite the processing of permit applications that have not been reviewed within designated time frames as stated in the Administrative Procedure Act. (See Agency Recommendation #4.)
- c. Compile and publish performance records of permitting agencies.
- d. Serve as an advocate to assist in coordinating the permit process and in expediting a resolution of the permit process as swiftly as possible.
- e. Schedule and chair meetings attended by a permit applicant and a representative of the permitting agency for the purpose of promoting a negotiated resolution of the permit process and prepare a report of each meeting, including a statement of any agreements entered into and any unresolved issues relating to the issuance of the permit.

The Study Commission Recommends:

II. Agency (Continued)

- f. The Office shall maintain a permit master file in a form that shall best serve the public convenience for obtaining the information contained therein and shall publish a directory or other document to inform the public of the availability and general content of the master file and to enable prospective applicants to identify the permits required for the various commercial and industrial projects or activities.
- g. The Office shall conduct a survey of each state agency at least four times a year and obtain the following information on each permit application which, at the time of the survey, has been pending before an agency for more than 90 days:
 - 1. The nature of the project or activity.
 - 2. The status of the permit review.
 - 3. The reason for the length of time of review.
 - 4. The estimated additional time until the completion of the review.
 - 5. Any additional information that the office deems appropriate.

After compiling the performance measurements of agencies, the Office of Business Advocacy shall recommend to the Governor and Legislature appropriate methods of increased efficiency, productivity and performance; for example, increased staffs, use of private firms, etc.

The Study Commission Recommends:

III. Administrative Procedure Act:

The Commission recommends that the Administrative Procedure Act be amended in the following manner:

1. The Administrative Procedure Act should require that the following checklist of questions be answered in place of the present social economic impact statement, to the extent reasonably possible by the rulemaker, which would determine the burden/costs and the appropriateness of the proposed regulation. This information would be printed in the New Jersey Register as a means of establishing the actual intent of the Agency and as a means of notifying the regulated public of intended regulatory impacts.

Questions regarding burden costs: (as to all regulated parties, and as to small businesses generally and as to differing types and sizes of small businesses.)

- a. Number, nature and size, of regulated parties.
- b. Whether or not on-site inspections will be required.
- c. Quantification of number of forms, impact statements, surveys and all state-imposed paperwork on regulated parties.
- d. Will regulated parties be required to maintain records for state use or other authorities or for research purposes?
- e. Will regulated parties be required to obtain licenses, certifications, or permits? If so, what is a reasonable estimate, in quantifiable terms, of the magnitude of all fees and fines?
- f. Will regulated parties be required to appear in person before the agency?

The Study Commission Recommends:

III. Administrative Procedure Act (Continued)

- g. Will regulated parties be required to disclose information on materials or processes, including trade secrets?
- h. Will regulated parties be required to report certain incidents?
- i. Will regulated parties be required to adhere to either design or performance standards? Explain reasons for excluding or including either.
- j. Will regulated parties be required to retain lawyers, accountants, engineers or other consultants in order to comply?
- k. What are the anticipated initial regulatory impacts, according to the agency applying the regulations?
- l. What are the estimated dollar costs for compliance with the regulation to the regulated community en toto? This estimation should not be construed to be limited to procedural costs and should include the agency's best estimate of the regulation's full economic impact.
- m. What will the regulation-implementation costs be to the agency, including personnel costs?
- n. What source of funding has been identified and targeted to administer, implement and maintain the rule at the state and local level?

The Study Commission Recommends:

III. Administrative Procedure Act (Continued)

Appropriateness Questions:

- a. What is the factual, scientific or technical basis for the agency's determination that the regulation will accomplish its intended purpose?
- b. How does the rule provide the less costly or intrusive approach for meeting the intended purpose? Is it unnecessarily general in its application?
- c. What overall less costly alternative approaches were considered by the agency or suggested by interested parties, and what specific alternative measures were taken to minimize the impact on small business? Describe alternatives submitted and or considered. Explain reasons for rejecting them.
- d. Is the rule in conflict with any existing law or rule?
- e. Does the rule duplicate any existing law or rule?
- f. Is the rule written, or is an explanation provided, in a manner that allows those affected by the rule to readily understand its terms? Is it written in a clear, unambiguous manner?
- g. Is the rule in accord with any pertinent judicial findings?
- h. Why is the rule appropriate, necessary and reasonable?

The Study Commission Recommends:

III. Administrative Procedure Act (Continued)

Regulatory Flexibility Questions:

Part I:

Does this rule impose reporting, recordkeeping and/or other compliance requirements on small businesses?

If YES, answer the questions in Part II.

If NO see Part III

Part II:

- a. How is the rule designed to minimize any adverse economic impact on small businesses in quantifiable terms?
- b. Does the rule establish differing compliance or reporting requirements or timetables that take into account resources available to small businesses?
- c. Does the rule exempt small businesses from all or part of its reporting, recordkeeping or compliance requirements?*

* If non-exemption is based on endangerment to public health, safety and welfare, please explain the relationship between the non-exempted requirement and the public health, safety and welfare.

- d. Does the rule utilize other methods to minimize any adverse economical impact on small businesses?

The Study Commission Recommends:

III. Administrative Procedure Act (Continued)

Part III:

- a. Rules which do not impose recordkeeping or other compliance requirements on small businesses must be accompanied by a statement that "a Regulatory Flexibility analysis is not required because this proposal does not impose reporting, recordkeeping or other compliance requirements on small businesses." Following this sentence, explain the basis for concluding that the rulemaking does not impact on small businesses.
2. The Administrative Procedure Act should require as part of the second notice requirement, as presently stated, at least one paid notice in at least one trade or special interest publication or newsletter, where such exist, that serves the specific population affected by the regulation.
3. The Administrative Procedure Act should allow the present public written comment period to expand to an additional 30 days if requests are received by the department from 25 or more individual affected parties, within the existing comment period.
4. The Administrative Procedure Act should allow, in addition to the present public hearing procedure, that a public hearing must be called if requests are received signed by 25 or more affected parties, within the existing comment period. A request for public hearing replaces a request for written comment extension.
5. The Administrative Procedure Act should require the publishing of a notice, describing the intent of a pending proposal in the New Jersey Register. Such notice must be published at least 30 days prior to the publication of the actual proposal notice.

The Study Commission Recommends:

III. Administrative Procedure Act (Continued)

This requirement, upon request, may be waived by the Director of the Office of Regulatory Services if good cause has been shown by the promulgating agency.

6. When no public comment nor request for public hearing are received during the proposal process (see recommendations 3 and 4) the rule should immediately take effect.
7. That the Publisher of the New Jersey Register should initiate a task force for the purposes of providing a comprehensive reorganization of the New Jersey Register. Particular attention should be paid to making the Register easier for the general public to understand and use, and to increasing the general public's understanding of the entire regulatory process, and particularly the regulated public's options under the law. The task force would consider alternatives such as comprehensive public outreach pamphlets and changes to the manner in which the Register is published, including consideration of interest-group specific register supplements.

The Study Commission Recommends:

IV. Implementation

1. The Study Commission encourages agencies to contract out portions of their permits process through an agency-managed certification process for private firms. Agencies should authorize these private firms to process applications and requests for permits. Once placed upon a certification list, these private firms may be utilized when permitted by a department/agency head.
2. Legislate the requirements of Governor Byrne's Executive Order. 66, so that all regulations have to be readopted periodically. This would include regulations adopted before the publication of E.O. 66 as well as those covered by the original executive order.
3. Agencies should be required to place all law and facts pertinent to the agency's action under appeal on the record at the level of the Office of Administrative Law. The record before the agency head should be limited to that developed before the Administrative Law Judge.
4. A standard to be followed by agency heads in reviewing recommended decisions of Administrative Law Judges should be developed. The standard should be similar to that applied by appellate courts in reviewing the non-jury determination of trial courts. Under that standard, the Administrative Law Judge's findings of historical fact may be rejected only if they are clearly erroneous as demonstrated by an absence of adequate, substantial and credible evidence on the record. The agency head would maintain the authority to consider *de novo* issues of law. For purposes of this standard, "law" also includes regulations adopted by the agency pursuant to the Administrative Procedure Act.

The Study Commission Recommends:

IV. Implementation (Continued)

5. The criteria set forth by the Supreme Court in the leading case of *Metromedia, Inc. v. Director, Div. of Taxation*, 97 N.J. (1984), for identifying whether an agency should proceed by rulemaking, or by another method or methods, in making a determination, should be codified. Such a codification will provide a legislative mandate that agencies should be guided by a uniform set of rules in making their procedural determination with respect to matters placed before them by litigants, the public, and the Legislature. The legislative endorsement of the Supreme Court's criteria would eliminate any uncertainty which may remain among policy makers as to the issues which they must consider in deciding whether to proceed by adjudication or rulemaking or any other informal method which may otherwise be available.

Attachment C

**NEW JERSEY
CURRENT
RULEMAKING
PROCESS**

**PREPARED BY:
OFFICE OF ADMINISTRATIVE LAW
JUDGE R. I. PARKER
ACTING DIRECTOR**

CURRENT RULEMAKING PROCESS

In order to understand the current rulemaking process, it is important first to become acquainted with certain terms and publications.

A. Definitions

Rule

In common usage, a rule is a prescribed guide for conduct or action (Webster's New Collegiate Dictionary). The Administrative Procedure Act (APA) defines the term "rule" as an "agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency." The term also includes the amendment or repeal of any rule.

Rule Proposal

A rule proposal is generally the initial rulemaking proceeding in which an agency submits a Notice of Proposed Rulemaking to the OAL for filing. The rule activity may consist of a proposed new rule, a proposed amendment to modify, alter or revise an existing rule, a proposed repeal of a rule or a proposed readoption. In all instances the proposal procedure is necessary.

Rule Adoption

The adoption of a rule is the final agency action on the proposed rule whereby the rule is officially approved and authorized for promulgation by the agency. To "promulgate" means to proclaim officially and thereby render effective a new rule, amendment or repeal that was duly adopted by an agency and filed with the Office of Administrative Law. The promulgation date of a rule is its effective date.

The New Jersey Register

The New Jersey Register is a semi-monthly publication of the Office of Administrative Law (OAL) that contains all proposals and adoptions of rules promulgated pursuant to the APA. The Register also contains miscellaneous agency notices and formal Attorney General Opinions. The Register is divided into two main sections: *Rule Proposals*- which includes the text of all proposals, arranged by agency name and proposal subject; and *Rule Adoptions*- which include the full text of all adoptions, likewise arranged by agency name.

The New Jersey Administrative Code

The New Jersey Administrative Code is a compilation of rules adopted by State agencies. The OAL, pursuant to the Administrative Procedure Act, is responsible for maintaining and updating the Code. Each agency's body of rules is codified in a separate Title of the Code. Each Title contains a chapter table of contents and an index. Also, each individual chapter contains a table of contents. The Code is annotated to provide the reader with a complete framework in which to analyze the selected rule. Annotations include: legislative authority for the rulemaking; source and effective date of the rules; historical notes that discuss prior regulatory activity; the expiration date of the rule; and case notes (these notes consist of listings of Court and OAL cases, and formal Attorney General Opinions).

Executive Order No. 66 (1978)

Executive Order 66, executed by Governor Byrne, provides that all rules adopted after May 15, 1978 shall include an expiration date (sunset date) that is no later than five years from the effective date of the rule. The order was issued to discourage excessive agency rulemaking by requiring a reflective rulemaking review to eliminate unnecessary, redundant, confusing or unreasonable rules.

B. Administrative Procedure Act (APA)

All agency rulemaking activities, unless exempted by the APA, must be submitted to the Office of Administrative Law for review of technical, substantive and legal conformance with the requirements of the APA, and the OAL's rules for agency rulemaking. Thus, rulemaking activities, such as petitions for a rule, pre-proposal of a rule and all other rulemaking proceedings, are submitted to the OAL.

When adopting a rule, the agency must follow the steps described in the Administrative Procedure Act. The APA requires, among other things, agencies to submit a proposal notice, a minimum 30-day period to receive comments from the general public and an adoption notice announcing the effective date of the rule. Also, both the APA and the OAL rules allow for agencies to utilize additional tools in the rulemaking process. These include the pre-proposal process, rule negotiation and public petition for rulemaking activity.

1. Pre-Proposal

The pre-proposal procedure may be used by the agencies to "test the waters," address possible difficulties prior to the actual formal promulgation of rules, and to insure that interested parties' input has been considered. By pre-proposing, considerable time and difficulty can be spared.

If an agency wishes to begin the pre-proposal process, it must submit a Notice of Pre-proposal to the OAL for publication in the Register, and provide at least a 30-day comment period prior to submitting a formal Notice of Proposal on the same subject. The agency's notice can take various forms. For instance, the agency can simply state the subject matter of the intended rulemaking without proposing the text of the rule.

When filed with the OAL, the pre-proposal must include the name of the agency and agency head; a citation to the legal authority authorizing the rulemaking action; discussion of the subject matter and/or the problem or purpose the agency wishes to address; and, if available, the draft of the contemplated rules. The pre-proposal must also contain where and when interested persons may submit their comments or attend any hearings or conferences for the contemplated rulemaking action.

Once the pre-proposal is submitted to the OAL, staff will review for compliance with the APA. Staff will also check for any spelling, grammatical or typing errors. If there are any changes to be made to the notice prior to publication, the promulgating agency will be contacted. If the pre-proposal, as submitted, is sufficient, the notice will be published in the Register.

2. Negotiation

Another tool available to the agencies is a process that has been developed by the OAL and is known as rule negotiation. An agency wishing to utilize this process must submit a written request to the OAL, along with a summary of the subject matter and a description of the problem and purpose that the agency seeks to address. The submittal must also contain a list of the affected interests and suggested representatives of those interests. The agency and each interest group noted will have one representative involved in the negotiation. A negotiation team is composed of no more than ten members, including the assigned OAL representative.

Once it has been determined that rule negotiations should begin, a Notice of Rule Negotiation will appear in the Register. The notice must identify the subject matter, all noted interests, the selected participants and the OAL representative. Any interested party who is not mentioned in the notice may file a petition for participation. The OAL representative will determine whether the petitioner will be included in the negotiations. Within 20 days of the notice appearing in the Register, the OAL representative will convene the negotiation team. Once negotiations have been completed, all participants will be provided with the final version of the negotiated draft. The agency will then either propose the rule or notify the OAL and all participants that it has rejected the draft.

3. Petition

An additional avenue of entry to the regulatory process is the public's ability to petition an agency to initiate rulemaking activity. This activity could take the form of either proposing a new rule, or repealing or amending an existing rule. The receiving agency must file a notice of the petition within 15 days of receipt. The notice should include the

name of the petitioner, the nature of the requested rulemaking, the problem or purpose that is the subject of the request, and the date the petition was received. The OAL will publish the notice in the next available Register.

Within 30 days of receiving the petition, the agency must mail to the petitioner, and file with the OAL, a notice of action on the petition. This action will result in either denying the petition or the filing of a notice of pre-proposal or proposal. The agency may also refer the matter for further deliberations.

The activities described above, specifically the pre-proposal process and rule negotiation, are tools that may be utilized by the agencies. In order to adopt a rule, the promulgating agency must go through the complete proposal process. It is through this process that those affected by a possible rule, and the public in general, are given the opportunity to comment on the rule and its effects.

4. APA Requirements

When proposing a rule, the agency must submit a Notice of Proposal to the OAL. The notice must contain the name of the agency and the agency head, and a citation to the specific legal authority authorizing the proposed rulemaking activity. This citation must identify the source of the rulemaking authority of the adopting officer. The notice must also include an announcement of the public's opportunity to respond to the proposal. If the agency plans to conduct a public hearing on the proposal, the notice will announce the scheduled time and location.

The notice must also contain a summary of the proposal's subject matter and a clear and concise explanation of its purpose and effect. Also, statements concerning the social

and economic effects the proposed rule will have on the public must be included within the notice. The social impact statement must include an explanation of the social effect of the proposal, an identification of those affected and the projected reaction to the proposal. A properly prepared economic impact statement includes a description of who is affected economically by the proposal, statistical information when available, and how the proposal may affect funding sources.

The rule proposal must also contain either a regulatory flexibility statement or analysis. This section of the proposal should include a description and estimation of the small businesses affected and a description of the record-keeping and reporting requirements imposed. The statement or analysis must also contain an indication of how the proposal is designed to minimize any adverse economic impact to small businesses.

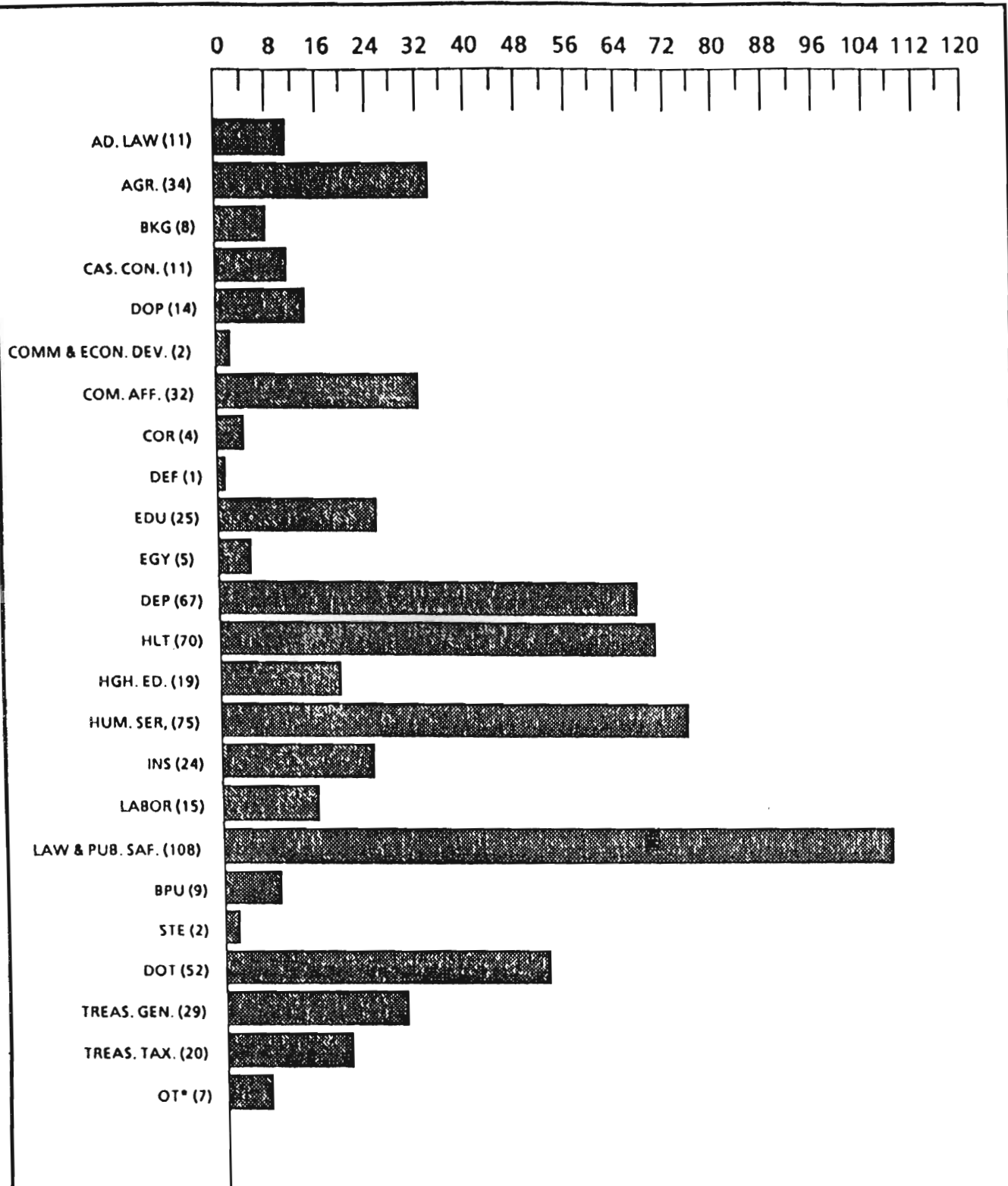
Finally, the rule proposal must contain the text of the rule along with any changes, amendments or repealed sections.

Once received, the rule proposal is delivered to the Legislature and OAL begins its review for technical compliance with the Administrative Procedure Act and the OAL rules on rulemaking. If technical problems are detected, the OAL staff will contact the proposing agency and attempt to resolve the situation. If staff discovers a legal problem, the proposal is referred to the Attorney General's Office for resolution. Once OAL's review is completed, the proposal is published in the Register. Upon publication, the minimum 30-day public comment period begins.

If the agency decides to conduct a public hearing, in order to allow any interested party time to prepare, it must schedule the hearing no earlier than 15 days after the notice appears in the Register. Although any member of the public may request a public hearing, the agency is not required to oblige. However, any governmental entity or legislative committee may require that a public hearing be held.

A proposed rule cannot be adopted by an agency or filed with the OAL until the end of the public comment period or 60 days after the submission of the proposal to the Legislature, whichever is later. When adopting a proposal, the agency must file a Notice of Adoption with the OAL. This notice must include the subject of the rule, the New Jersey Administrative Code citation, the effective date of the adoption and the expiration date of the rule. The notice must also include a summary of the public comments received along with the agency's responses. Once a Notice of Adoption is received by the OAL, staff will check for compliance with the APA. This review includes checking for consistency with the proposal in order to assure that the agency has not made any substantial changes. If substantial changes have been made, the agency must re-propose the rule to allow for public notice and comment.

After the Notice of Adoption has been reviewed by the OAL staff, it is published in the New Jersey Register and the rule is considered promulgated. The rule is then published in the New Jersey Administrative Code.

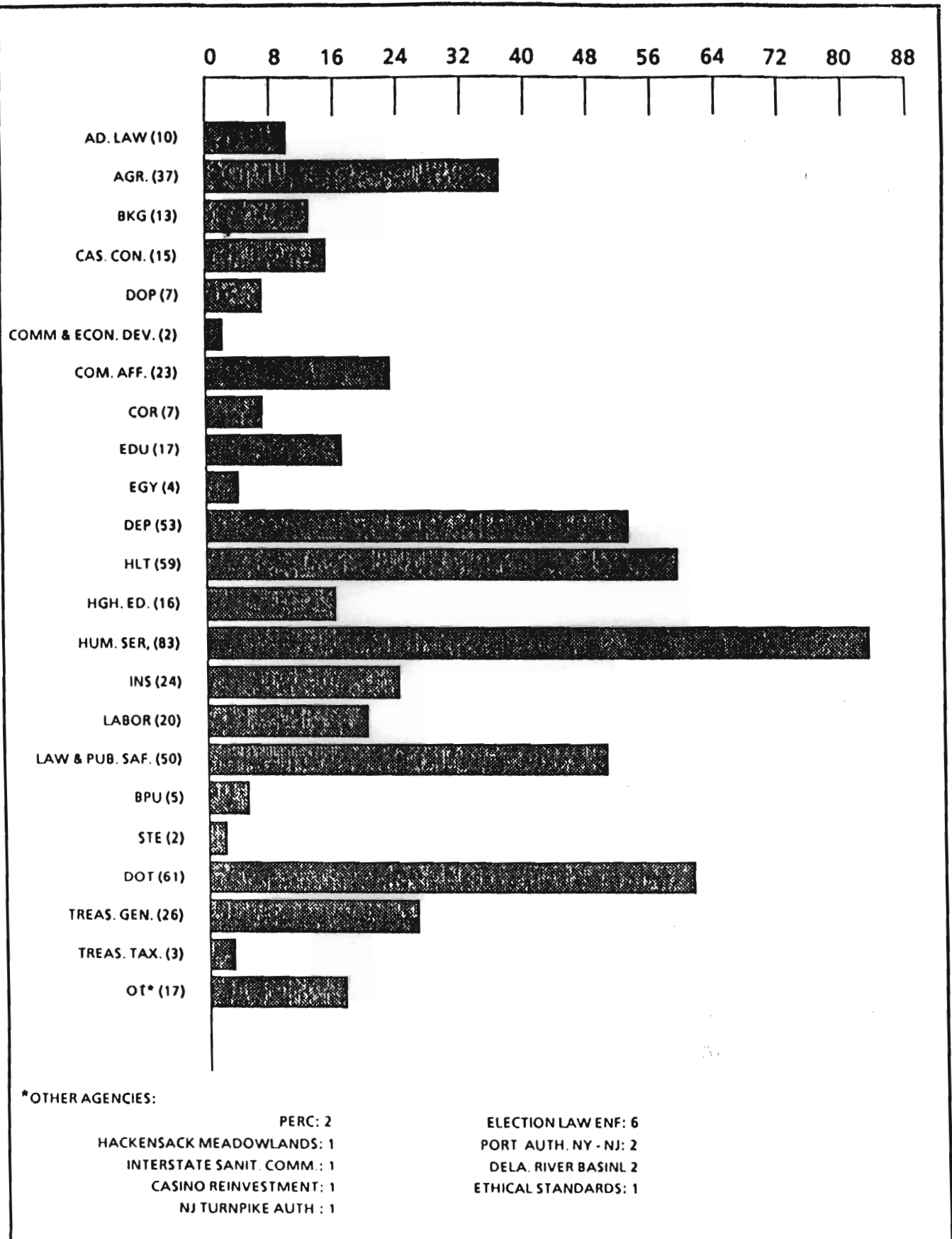


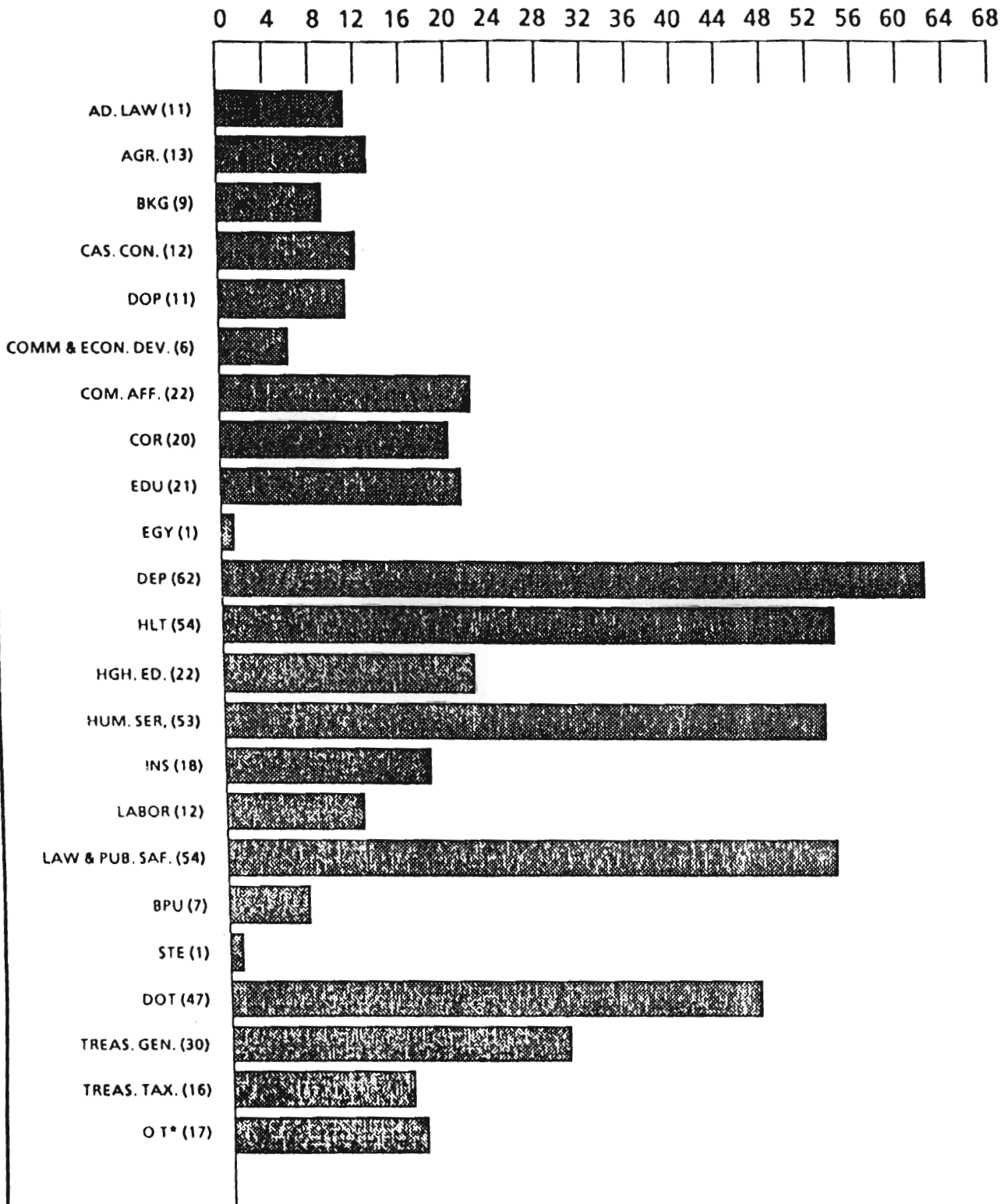
*OTHER AGENCIES:

ELECTION LAW ENF.: 3
 HACKENSACK MEADOWLANDS: 2
 HIGHWAY AUTHORITY: 2

TOTAL ADOPTIONS 1986

528

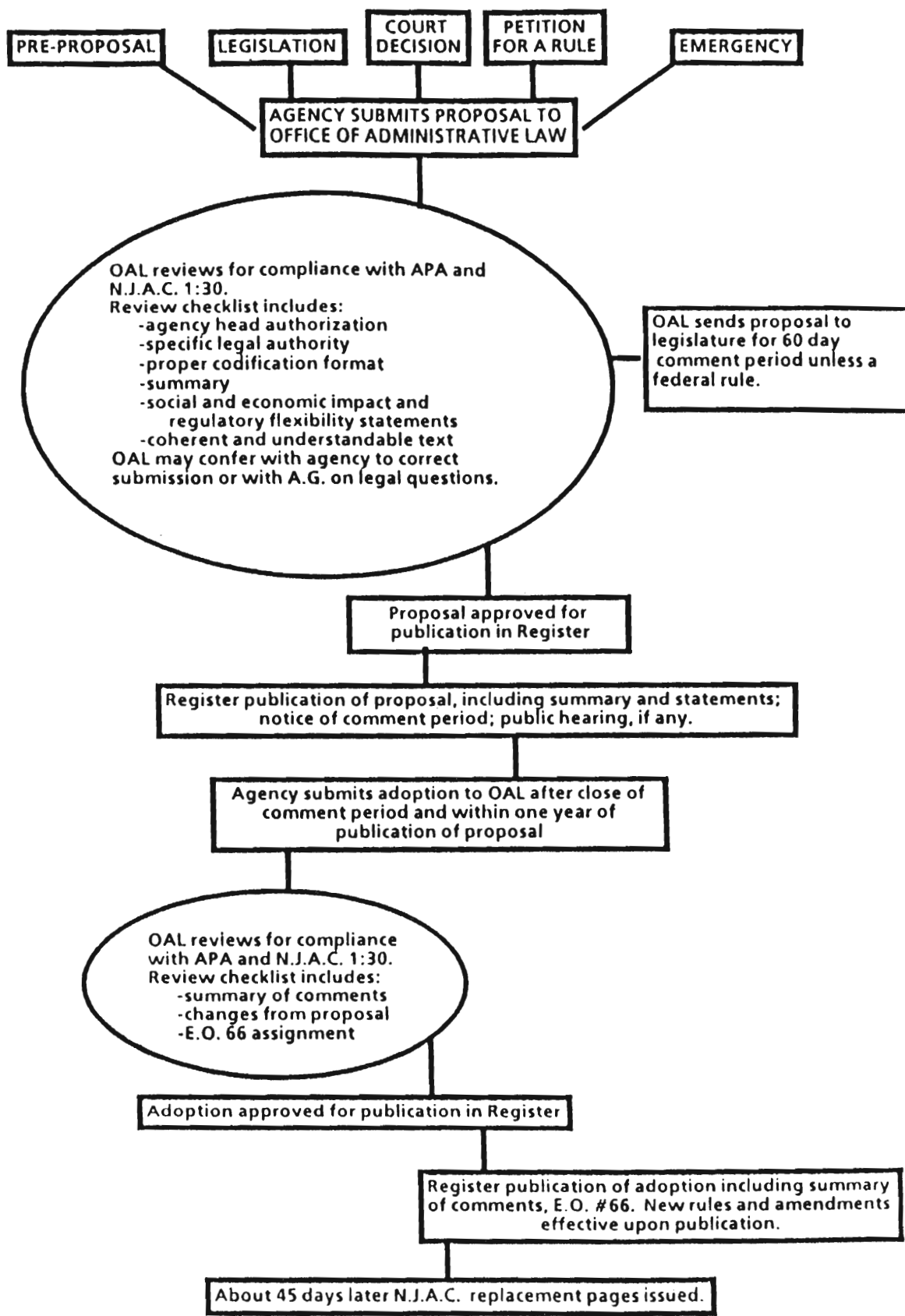




*OTHER AGENCIES:

PERC: 1	ELECTION LAW ENF: 1
HACKENSACK MEADOWLANDS: 5	HIGHWAY AUTHORITY: 5
DELAWARE RIVER BASIN: 2	CASINO REINVESTMENT: 1
ATLANTIC CO. TRANS: 1	NJ ECONO DEV: 1

NEW RULES, AMENDMENTS, REPEALS OR READOPTIONS



Attachment D

MEMBERSHIP LIST

Mr. Albert F. Mogerley
PUBLIC MEMBER

Mr. James C. Morford
NEW JERSEY STATE CHAMBER OF COMMERCE

Honorable Feather O'Conner - Mr. Robert Preston (Alternate)
STATE TREASURER

Mr. Brian A. Parent
ATLANTIC ELECTRIC COMPANY

Honorable Ronald I. Parker Esq.
OFFICE OF ADMINISTRATIVE LAW

Honorable Bordan Putnam - Dr. Rocco Guerrieri - (Alternate)
DEPARTMENT OF COMMERCE

Mr. Joseph F. Riggs
NEW JERSEY BUILDER'S ASSOCIATION

Honorable Charles Serraino - Mr. Al Vuocolo (Alternate)
DEPARTMENT OF LABOR

Honorable Alfred Slocum - John Jacobi Esq. (Alternate)
DEPARTMENT OF THE PUBLIC ADVOCATE

Mr. Thomas F. Small, III
ASSOCIATION OF NON PROFIT HOMES FOR THE AGING

Mr. Jon Spinnanger
SOCIETY FOR ENVIRONMENTAL ECONOMIC DEVELOPMENT

Mr. Jeffery N. Stoller
N.J. BUSINESS AND INDUSTRY ASSOCIATION

Mr. Grant T. Tate, Jr.
NEW JERSEY AFL-CIO

Mr. Ellis S. Vieser
NEW JERSEY ALLIANCE FOR ACTION

Assemblyman John Watson
ASSEMBLY MINORITY

Senator Richard Zimmer
SENATE MINORITY

Attachment E

SUBCOMMITTEE MEMBERSHIP

MEMBERSHIP

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Mr. John Luneski
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Judicial Standard of Review

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Chairperson: Mr. Jeffery N. Stoller

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Mr. Ellis S. Vieser

Attachment F

COMMISSIONER COMMENTS

COMMISSIONER COMMENTS

Mr. Gerald Goldman, Esq.

Honorable Robert Franks

Mr. James C. Morford

Mr. Jeffery N. Stoller

Mr. Robert A. Preston

Honorable Kenneth D. Merin

Honorable Molly Joel Coye

Mr. John Luneski / B. Franklin Reinauer, III

Honorable Richard Zimmer

Honorable Alfred A. Slocum

GOLDMAN, CARLET, GARRISON, BERTONI & KLEIN

ATTORNEYS AT LAW

1135 CLIFTON AVENUE

P. O. BOX 2666

CLIFTON, NEW JERSEY 07015-2666

(201) 777-6200

TELECOPIER: (201) 777-0412

GILBERT KLAPERMAN

OF COUNSEL

N.Y. BAR ONLY

NEW YORK OFFICE

FOURTH FLOOR SUITE

440 PARK AVENUE SOUTH

NEW YORK, NEW YORK 10016

(212) 869-2147

GERALD GOLDMAN **
FRANK A. CARLET *
GEORGE L. GARRISON
LOUIS B. BERTONI
HAROLD GOLDMAN
NORMAN I. KLEIN **
HENRY G. KLEIN **
MICHAEL J. ZARETSKY **
MARJORIE NEIFELD
PHILIP J. BATTAGLIA
IRENE U. MECKY
DAVID B. ZOLOTOROFF
MARLA J. MOSS
SUSAN C. BERGER **

** N.J. & N.Y. BAR
* N.J. & D.C. BAR

STUDY COMMISSION ON REGULATORY EFFICIENCY

COMMENT

Gerald Goldman, Esq.
Public Member

I

The Subcommittee Report on Judicial Standards of Review, (presented to the Study Commission on Regulatory Efficiency) fully acknowledged, what most lawyers and others know: that the courts in our State give substantial and significant deference to decisions by Administrative Agencies. (See Subcommittee Report Judicial Standard of Review, Pages 26-33).

The Subcommittee confirmed that reviewing courts are usually nothing more than a judicial echo of agency findings in almost every case; and that the "substantial evidence rule", the "presumption of validity rule" and the "special expertise rules" accorded Agency heads by the courts, all intertwine to make for affirmance of Agency actions in the overwhelming majority of cases. The imbalance is further compounded by the lack of a complete record below.

The result is that reversal of Agency Decisions or Rules by an aggrieved party is quite rare.

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The limitation on Judicial review often results, in sometimes conscious, and other times unconcious, "arrogance" of action on the part of the decision makers in the agencies who know that they are well insulated by Judicial deference.

II

Section 3-204(d)(5) of the Model State Administrative Procedure Act does provide for an optional provision that would shift the burden of proof to the Agency when that Agency has adopted a Rule in disregard of an objection to it made by the State's Legislative Review Committee.

Iowa is one such State that utilizes this method of shifting the burden of proof. A pertinent portion of the Iowa Statute states:

If the administrative rules review committee...finds objection to all or some portion of a proposed or adopted rule because the rule is deemed to be unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to the agency, the committee, governor or attorney general may, in writing, notify the agency of the objection...The burden of proof shall then be on the agency in any proceeding for judicial review or for enforcement of the rule heard subsequent to the filing to establish that the rule or portion of the rule timely objected to the above procedure is not unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to it.

I.C.A. Section 17A.4(4)(a).

This section of the Iowa statute was effectively utilized in Schmitt v. Iowa Department of Social Services, 263 N.W.2d 739

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(Iowa 1978), where the burden of proof was shifted from the challenger of a proposed rule to the promulgating agency.

The Iowa Supreme Court noted that in order for a shifting of the burden to occur, the Review Committee's objection to a proposed rule should be specific so that its "findings are sufficient to convey to the agency the nature and scope of the objection". Id. at 744. In this case the Court felt that the agency had been sufficiently apprised of the Committee's objection, and therefore held the burden shifted. See also Iowa Auto Dealers v. Iowa Department of Revenue, 301 N.W. 2d 760 (Iowa 1981), where the Iowa Supreme Court explained the burden-shifting process:

When an objection to a rule is procedurally correct, the burden to prove the rule's substantive validity shifts to the agency in the judicial review proceeding. No dispute exists concerning the procedural adequacy of the committee's objection in this case. Therefore respondents have the burden in this action to establish that the portion of the rule objected to "is not unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to it".

Id. at 762, quoting Schmitt, 263 N.W.2d at 744.

Vermont (3 V.S.A. Section 842(b) has a substantially similar provision.

One State, Kentucky, places the burden of proof on the agency from the outset. The pertinent portion of the Kentucky statute states:

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ATTORNEYS AT LAW

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Administrative regulations are presumed to be valid until declared otherwise by a court, but when an administrative regulation is challenged in the courts it shall be the duty of the promulgating administrative body to show and bear the burden of proof to show:

(1) That the administrative body possessed the authority to promulgate the administrative regulation;

(2) That the administrative regulation is consistent with any statute authorizing or controlling its issuance;

(3) That the administrative regulation is not in excess of statutory authority;

(4) That the administrative regulation is not beyond the scope of legislative intent or statutory authority;

(5) That the administrative regulation is not violative of any applicable statute;

(6) That the laws and administrative regulations relating to promulgation of administrative regulations were faithfully followed; and

(7) It shall be prima facie compliance with the provisions of this section as to the holdings of hearings, statements of consideration, consideration of tiering, local government impact, and fiscal impact to file with the court appropriate citations to the administrative register which indicate such compliance.

K.R.S. Section 13A140.

Yet, although such an approach "based upon a shifting of the burden of proof was endorsed as a desirable alternative by the Subcommittee", (see Pg. 32 of Subcommittee Report) the Subcommittee fell short of endorsing it.

It was disappointing to this member of the Subcommittee that its members avoided a more studied involvement in the question as to solving the judicial review issue; and in so doing it allowed perpetuation of Agency dominance without significant review.

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ATTORNEYS AT LAW

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It appeared that the Subcommittee did so because of its perception that such an approach was too radical and that it would be difficult to mount appropriate political support for such reform, combined with its concern that government action might be adversely affected. These may or may not be real concerns. However, it is suggested that the reform of Judicial review might have been explored in more detail.

III

However, the proposal by the entire State Commission on Regulatory Efficiency to create an Office of Regulatory Services, although certainly not imbued with all of the "balance" that a burden of proof rule might address, certainly addresses the concerns expressed by witnesses before the Committee about review of Agency actions.

At first presentation it appeared that the Office of Regulatory Services proposal was another bureaucratic overlay. However, upon reflection, it would appear that the Office of Regulatory Services has the potential for development of an administrative review process.

The Office of Regulatory Services would act as a reviewing body, to determine, prior to publication whether the Rule is appropriate, necessary and reasonable. It allows "the aggrieved party" a forum in which to seek review of proposed Agency action. Thus, it will provide opportunity for balance.

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The Office of Regulatory Services would be a reviewing office only. It would have no power to initiate.

In fact, it will have a function, in some respects, comparable to that of the division of Public Interest Advocacy in the Public Advocates Office (N.J.S.A. 52:27E-29). In fact, in the Mt. Laurel Township v. Public Advocate of New Jersey, (83 N.J. 522) (1980) the Supreme Court found that the Legislature did not abdicate its political responsibility when it permitted the Public Advocate to make legal evaluations of the public interest. On the contrary, the Public Advocate was required to look to Court decisions and existing laws to determine a clear public interest and then channel its discretion.

IV

Finally, with respect to the entire report of the Study Commission on Regulatory Efficiency, I believe that there are many, many worthwhile recommendations.

I would like to point one out for special consideration: that is the Recommendation II, Agency 3 which states:

Every Agency should adopt and maintain a policy of rule development by consultation. This requires proactive advisory committees, with participation from the public, regulated community and other affected agencies or persons with special expertise. Consultations, in order to have any effect must occur before the Agency drafts regulatory language for publication in the New Jersey Register.

I give particular emphasis to the last sentence which

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provides that even before an Agency begins to draft regulatory language it must consult with the interested and regulated parties.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald Goldman". The signature is fluid and cursive, with the first name "Gerald" and last name "Goldman" clearly distinguishable.

GERALD GOLDMAN, ESQ.
Public Member

GG/lm

**Comments To
The Study Commission On Regulatory Efficiency**

Submitted by:
Assemblyman Bob Franks

As the sponsor of the bill that created the Study Commission on Regulatory Efficiency, I take great pride in this body's work. After a year of thorough examination of every aspect of the regulatory process, this commission presents recommendations, that if undertaken, will change the face of bureaucracy to the benefit of all. Red tape will be cut, government will be more efficient, business will be allowed to flourish and a new era of cooperation between government and the regulated community will be ushered in.

The reforms recommended - from the bill drafting stage to final implementation are revolutionary. In its totality, these recommendations will substantially improve the public policy-making process.

The major components of this report center on three areas. First, we call on the Legislature to take more time and pay more attention to detail when drafting and passing bills. By tightening up bill language, making legislative intent clear, and having a thorough understanding as to the costs and problems involved in implementing new laws, many regulatory problems can be avoided. Accountability needs to be shifted back to the elected officials who write the laws rather than rest with bureaucrats who are insulated from public input and review.

Second, by revising the Administrative Procedures Act, agencies will be forced to go on record as to the effects of proposed rules. No longer will agencies be able to hide behind the facade of not having adequate public input. By developing specific new requirements under the APA, agencies will be put on notice that blatant disregard of legislative intent and public input will not be tolerated.

The most important recommendation this body puts forth is the creation of the Office of Regulatory Services. This office is designed to be the watchdog to insure that agencies do not disregard the APA and to guarantee that the public has adequate input in the promulgation of new rules. By creating this office within the Executive branch, with jurisdiction over the New Jersey Register, the Governor as

chief execution of the state can better manage his bureaucracy and improve the efficient implementation of new policy initiatives.

Under the regulatory process proposed by SCORE, all parties will benefit as long as a level playing field can be maintained. Unfortunately, past practices demonstrates an adversarial relationship between bureaucrats and the regulated public. This, above any other reason, is grounds to establish a new body that can mediate between parties until a level of trust can be established. The Office of Regulatory Services is therefore a linchpin to comprehensive reform of the regulatory process.

Unlike, any other commission in New Jersey history, SCORE has distinguished itself by meeting its mandate within its prescribed time frame, achieving its objective well under budget and most gratifying, having full and consistent participation of all 33 members.

I commend the commission members for their diligence and the staff for their excellent work.



NEW JERSEY STATE
CHAMBER OF COMMERCE
Governmental Relations Office
28 West State Street, Suite #1100
Trenton, NJ 08608
(609) 989-7888

August 23, 1988

The Honorable Thomas H. Kean
The State House
Trenton, NJ 08625

Dear Governor Kean:

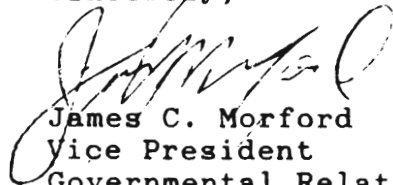
It has been my privilege to represent the New Jersey State Chamber of Commerce on the Study Commission on Regulatory Efficiency. Under the Leadership of Chairman Roger Bodman, with the very able staff services provided by Executive Director Bob Miller, and Chief of Staff Tom Meehan and with the dedication of its members, the Commission is able to deliver its report on time and under budget.

The findings and recommendations of the Commission were arrived at after very considerable investigation, hearings, sub-committee review and full commission deliberation. The evidence accumulated supports the assertion that our regulatory system is in need of reform.

The results of the work of the Commission, when implemented, will provide meaningful reform to a much criticized area of our ever expanding state government. The reforms called for place greater responsibility on the Legislature for clarity of intent. Other recommendations would produce greater consistency in the rule-making process, provide the opportunity for meaningful participation by the regulated public and place reasonable constraints on the regulating agencies.

The New Jersey State Chamber of Commerce is pleased with the results of the Commission. We look forward to your evaluation and commentary as well as that of the Legislature.

Sincerely,



James C. Morford
Vice President
Governmental Relations

JCM/lvs



**New Jersey
Business & Industry
Association**

102 West State Street - Trenton, New Jersey

August 11, 1988

**Mr. Tom Meehan
Chief of Staff
Study Commission on
Regulatory Efficiency
CN 049, 9 Quakerbridge Plaza
Trenton, NJ 08625**

Dear Tom:

The New Jersey Business & Industry Association offers its strong support for SCORE's final recommendations. Despite the diversity of the 33-member panel, representatives of State Agencies and the regulated community alike approved these suggestions by an overwhelming margin. We are hopeful that this consensus will translate into a broad-based movement for subsequent enabling legislation.

The fact that the report has been completed on time and within budget is a reflection of the hard work and cooperation of the staff, Commission members, and SCORE's Executive Committee. Chairman Roger Bodman, Co-Chair Steve Picco, and Assemblyman Bob Franks deserve special praise for their outstanding leadership.

The SCORE recommendations are common-sense proposals which will be fair to the public, to State Legislators, and to State Agency regulators. NJBIA disagrees with critics who claim that establishment of an Office of Regulatory Services within the Department of State will itself create an unwieldy layer of state regulation. If the other safeguards recommended by the Commission are put in place, there is no reason why a small ORS staff should not be able to handle the remaining problems that surface. It is sadly ironic that the State of New Jersey spends \$30 million each year to provide a free legal defense for people accused of crimes, but balks at the idea of a small office to defend the rights of businesses seeking to obey the law.

NJBIA urges the State Legislature to act promptly on SCORE's thoughtful blueprint for regulatory reform.

Thanks again for all your help with this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Stoller". The signature is fluid and cursive, with the first name "Jeff" and last name "Stoller" clearly distinguishable.

**Jeffrey N. Stoller
Assistant Vice President**

Study Commission On Regulatory Efficiency

Robert A. Preston

Alternate to the Commission

For the Treasurer

On behalf of the Honorable Feather O'Connor, as her alternate to the Commission, the following comments are submitted for inclusion in the final report.

As required by P.L. 1987, c. 130, the Commission was to review "evaluating the cost versus the benefit of rules and regulations."

While generally endorsing the Study Commission report, I have some concerns. My concerns stem from the fact that the Department of Treasury's primary interest is in the costs associated with the administration, implementation and maintenance of any rule, particularly those costs that will require continued fiscal support from state resources. I feel that the findings and recommendations do not adequately address the mandate to review evaluating the cost versus the benefits of rules and regulations.

Since being designated as the Treasurer's Alternate on March 29, 1988 I have been adamant in my effort to get as much specific language in the recommendations as needed to insure that adequate cost (economic impact) statements would be developed for each proposed rule. The suggested language in the recommendations in both the Agency and the Administrative Procedures Act portions of the report should satisfy this effort.

The appropriateness questions found in the recommendations of the Administrative Procedures Act portion of the report begin to address the issue of evaluating the benefits of a proposed rule, but fall short of describing what is wrong, how the proposed rule will affect what is wrong and how much better off society will be after the rule is adopted and implemented. Neither the findings nor recommendations address an adequate process that would improve the description of the benefit of a rule or regulation that would enhance an effective evaluation.

The same questions are offered as replacements for questions presently asked by the current Administrative Procedures Act (and Rulemaking Manual). The current

questions, if enforced, and if supplemented by the proposed questions, would provide far better information for the development of a cost versus benefit analysis than would the new questions alone.

Finally, while having cast an affirmative vote on the recommendations of establishing an Office of Regulatory Services, in, but not of, the Department of State, I feel it is necessary to amplify my previous remarks on this subject. A single element of state government must be responsible for regulatory efficiency. To avoid any appearance of conflict, such responsibility should be placed in, or in, but not of, an agency that does not normally propose or promulgate rules. Any decision as to whether this responsibility should be in an Office of Regulatory Services, the Office of Administrative Law or any other existing or proposed agency should be based on where the enforcement of the rule making process can be most effective. If the recommendations in the report are adopted, it is essential that the Office of Regulatory Services ensures that the review of the cost of implementation and maintenance of requirements imposed by rules and regulations are not overshadowed by the review of the cost to promulgate and administer them. Regardless of where such responsibility lies, accountability for quantifiable and quality social and economic impact statements must be guaranteed.



**State of New Jersey
DEPARTMENT OF INSURANCE**

**KENNETH D. MERIN
COMMISSIONER**

August 23, 1988

Roger Bodman, Chairman
SCORE Commission
9 Quakerbridge Road
Trenton, NJ 08625

Dear Mr. Bodman:

I have had an opportunity to examine the recommendations of the Study Commission on Regulatory Efficiency. On behalf of the Department of Insurance I wish to congratulate you and the Commission for your efforts. My comments relate to the projected operation of the recommendations on the Department of Insurance only.

In Section II, Recommendation No. 1 would require the publication of a regulatory calendar. Although the Department's rulemaking needs are difficult to project, this procedure is unobjectionable if it is non-binding.

In Section II, Recommendation No. 3 would require a policy of rule development by consultation with those persons or entities to be regulated. Although I agree that an attempt to secure public input throughout the rulemaking process is desirable, I am concerned that such a requirement as is proposed would return the Department of Insurance to the days of excessive dependency upon the insurance industry in the formulation of regulatory policy. In my opinion, the current procedures, including the use of "pre-proposals" and "proposals," are adequate to secure the appropriate input.

In Section III, Recommendation No. 1 requires that specific questions be addressed by the agency in the notice of proposal concerning burden/costs and appropriateness. I believe that to a great extent the questions in the proposed checklist comprise the existing requirements for the currently required summary, social and economic impact statements and Regulatory Flexibility Act statement. These statements afford an agency more flexibility than the proposed checklist and, if properly prepared, satisfy the intent of this recommendation.

Recommendation No. 5 in Section III requires that a notice describing the intent of a "pending" proposal be

published in the New Jersey Register at least 30 days prior to the publication of a notice of proposal. Although I favor providing the public with as much notice of rulemaking activity as possible, I am concerned about the time delay inherent in this procedure. Perhaps the implementation of your recommendations concerning the publication of a regulatory calendar would obviate the need for this procedure.

Recommendation No. 6 in Section III would allow a proposed rule to take effect immediately if neither comment nor a request for a public hearing is received. This concept is a good one, but the recommended procedure should be modified to enable an agency to make changes to a proposed rule, on its own initiative, where the changes are minor and consistent with N.J.A.C. 1:30-4.3.

Finally, in Section IV, Recommendation No. 4 would impose a review standard on an agency head that would prevent his or her rejection of an ALJ's findings of fact unless they were clearly erroneous and based upon the absence of adequate, substantial and credible evidence on the record. I fear that this provision would substantially erode the authority of an agency head by imposing an inappropriate review standard. Administrative hearings are quasi-judicial in nature with the parties not bound by formal rules of evidence; yet, the proposal would impose a strict judicial standard of review. Such a standard is inappropriate. In place of the experience, technical competence and specialized knowledge that should be accorded to an agency, this provision would substitute the opinion of an administrative law judge. This provision also appears to controvert some of our Supreme Court's statements in City of Hackensack v. Winner, 82 N.J. 1 (1980).

Thank you for providing me with the opportunity to comment on the Commission's recommendations.

Very truly yours,


Kenneth D. Merin
Commissioner of Insurance

KDM/RDK/dmc
RDK136

The Study Commission On Regulatory Efficiency

Submitted by:

Dr. Molly Joel Coyle, Commissioner
New Jersey State Department of Health

I am pleased to have this opportunity to comment personally on the mission and recommendations of the Study Commission on Regulatory Efficiency. Two and a half years experience as a regulator have demonstrated to me the value of providing opportunities for regulators and the regulated public to sit down together to share their perspectives and concerns on any given issue. The SCORE process, by convening both these groups to discuss the regulatory process itself, made important process in recommending solutions for the real and perceived problems identified in the final report.

In this regard, I most strongly endorse the recommendation encouraging rule development by consultation. We at the Department of Health have found that convening formal and informal advisory groups early on in our development or refinement of regulations has been invaluable in alerting us to potential problems in the regulatory solutions we've developed, and in identifying more effective alternatives for achieving our public health goals. For example, our Joint Hospital Payer Task Force, composed of representatives from the hospital industry, payers, Medicaid, the Public Advocate, the Health Care Facilities Financing Authority, The Hospital Rate Setting Commission and the Department of Insurance has been instrumental in developing a sweeping hospital reimbursement reform package intended from implementation in 1989.

Perhaps the most difficult problem facing a regulator, and the Study Commission itself in its final recommendations, is achieving the delicate balance between providing ample opportunity for input from the regulated community, while preventing the process from becoming too drawn out and cumbersome, delaying necessary action and causing possible harm to the public or competing members of the regulated community itself. It is for this reason that we take exception to the recommendation calling for public hearings whenever 25 or more affected parties request them. This recommendation would allow a minority of the hospital industry to delay revised reimbursement regulations sought by a majority of its members - - to cite just one example. Given how many opportunities for comment and analysis

currently exist, and given also that many of our actions are responses to problems identified by often-divided regulated groups, we believe this additional very costly step could create more problems than it will solve.

Overall, it is my hope that the work of the Study Commission will improve the regulatory process for the regulations, the regulated, and most important, the public whom we all seek to serve. I am pleased that the Health Department was invited to contribute its perspectives in this important effort.



John F. Luneski - Owner-Manager
31 Mercer St. Hackensack, N.J. 07601 / (201) 343-5117

July 15, 1988

The Honorable Thomas H. Kean
Governor of New Jersey
State House
Trenton, NJ 08625

Dear Governor Kean:

I am enclosing a letter from the Commerce and Industry Association endorsing the recommendations made by the Study Commission of Regulatory Efficiency.

As a businessman and Vice Chairman of the Association, it has been a distinct honor and privilege to have been able to work on the rule-making process.

We, as a body of business-minded people, support the changes, and hope through the executive branch of government we can see these recommendations come to pass.

Thank you for having the confidence in me as a representative of Commerce and Industry Association to serve on the Study Commission of Regulatory Efficiency.

Sincerely,



John Luneski

JFL:vfd
Encl.

LIST OF STATE WITNESSES

Meeting Date	Name & Title Department
September 21, 1987	<ul style="list-style-type: none">● Honorable Ronald I. Parker, Esq. <i>Acting Director</i> - Office of Administrative Law● Steven L. Lefelt, Esq. <i>Deputy Director</i> - Office of Administrative Law
October 6, 1987	<ul style="list-style-type: none">● John Jacobi, Esq. <i>Special Assistant</i> - Department of Public Advocate● Honorable Robert D. Franks <i>Assemblyman</i> - 22nd District
November 4, 1987	<ul style="list-style-type: none">● William M. Connolly <i>Deputy Director</i>, Division of Housing & Development Department of Community Affairs● Michael L. Ticktin <i>Administrative Practices Officer</i> Division of Housing & Development Department of Community Affairs● Honorable W. Cary Edwards <i>Attorney General</i> Department of Law & Public Safety
December 1, 1987	<ul style="list-style-type: none">● Honorable Molly Joel Coye <i>Commissioner</i> Department of Health● Honorable Kenneth D. Merin <i>Commissioner</i> Department of Insurance● Patricia K. Soeteber <i>Supervising Transportation Analyst</i> Office of Freight Services Department of Transportation
January 5, 1988	<ul style="list-style-type: none">● Michael F. Catania <i>Deputy Commissioner</i> Department of Environmental Protection

January 5, 1988

- **Susan Savoca, Esq.**
Assistant Director - Office of Regulatory Services
Department of Environmental Protection
- **William Holley**
Project Specialist - Office of the Commissioner
Department of Labor
- **Murray Baven**
Assistant to the President
Board of Public Utilities

February 2, 1988

- **Robert A. Preston**
Director, Division of Planning
Department of Treasury
- **Paul N. Jepson**
Senior Analyst
Office Management and Budget
Department of the Treasury
- **Cabinet Committee on Permit Coordination**
Dr. Rocco Guerrieri
Director, Office of Business Advocacy
Division of Economic Development
Department of Commerce
- **Paul Krane**
Program Manager
Office of Business Advocacy
Division of Economic Development
Department of Commerce

May 3, 1988

- **Honorable Arthur Albohn, Assemblyman**
Chairman - Regulatory Efficiency & Oversight
Committee
- **Glen Geebe**
Assembly Majority Office
Representing: **Robert Martin, Assemblyman**
Chairman - State Government Committee

Attachment H

PUBLIC WITNESSES



Commerce and Industry Association of New Jersey

Continental Plaza • 411 Hackensack Avenue • Hackensack, New Jersey 07601 • (201) 487-4600

July 14, 1988

The Honorable Thomas H. Kean
Governor of New Jersey
State House
Trenton, New Jersey 08625

Dear Governor Kean:

We have had an opportunity to examine the recommendations of the Study Commission of Regulatory Efficiency, which were recently made available to us. We sincerely hope that these recommendations will meet with your approval and that you will provide your support to have them receive favorable action in the legislature.

The Commission, under the guidance of Roger Bodman, has done a monumental job in putting together a comprehensive set of rules for orderly and constructive procedures for the preparation of regulatory legislation. As in other areas where New Jersey has taken the initiative of developing new approaches to the management of the state's affairs, these procedures, when enacted may well serve as a model for other states.

The Commerce and Industry Association of New Jersey, which has a significant number of the state's business organizations as members, is pleased to inform you of its endorsement of the recommendations. We also wish to express our appreciation for the opportunity of having one of our members, John Luneski of Olsten of North New Jersey, serve on the Commission as its representative.

You are to be commended for your role in the establishment of this Commission, and for bringing together these dedicated and capable people representing both the public and private interests of the state, to serve as its members.

Sincerely yours,

B. Franklin Reinauer, III
Chairman

Study Commission On Regulatory Efficiency

Richard A. Zimmer
Senator, State of New Jersey

Alfred A. Slocum
New Jersey Public Advocate

While endorsing the other recommendations of the Study Commission report, we strongly disagree with the proposal, contained in section II.6 of the report, to create an Office of Regulatory Affairs.

It is ironic and disconcerting that the Study Commission, charged by the Legislature to "make recommendations for economic improvements and greater efficiency in rule-making procedures" should adopt as a central recommendation the creation of a large new bureaucracy headed by a new regulatory czar with broad and ill-defined policy-making powers guaranteed to generate prodigious quantities of red tape. The Study Commission recommends that a new agency be created to perform ministerial functions that could be performed readily by the Office of Administrative Law. It recommends that this new agency be given policy oversight responsibilities that can be - indeed, are now - performed by the Governor's office in concert with Administration Commissioners and other agency directors.

In contrast with its other recommendations, which would improve the effectiveness of the current system and increase the efficiency and responsiveness of the regulatory process, this proposal would build on top of the structure of New Jersey regulatory activity a new layer of government. We cannot agree that the way to make a government more efficient and responsive is to create a new agency ancillary to what is being done now.

The new Office of Regulatory Services, would be a large and powerful agency indeed. The rule publication staff of the Office of Administrative Law will be transferred to this new office. It will have "Liaison" staff for "soliciting public input, mediating between the public and the (promulgating) agency, calling public hearings and auditing of Administrative Procedures Act requirements and checklists." It will have enough staff to exercise "oversight over all requirements of

the Administrative Procedure Act . . . ” The staffing of this new agency, in short, must be sufficient to create a shadow regulatory system.

After its staff has scrutinized each regulatory proposal, the agency would be empowered to refuse publication of any rule - before or after the comment period - if it concluded, in its judgment, that the promulgating agency has failed “adequately” to explain, for example:

- Whether the agency has chosen the most appropriate alternative approach to the regulatory situation. (See Study Commission recommendation III.b. and c.)
- Whether the agency has correctly interpreted the law relevant to its regulatory action. (See Study Commission recommendation III. d. and g.)
- Whether the rule is “appropriate, necessary and reasonable.” (See Study Commission recommendation III. h.)

In short, the agency will have the power to repeat from scratch the policy-making processes undertaken by the promulgating agency, requiring staff capable of significant and substantive insight.

How will this new agency exercise this authority to evaluate regulations in the many highly specialized substantive areas which are the subject of regulation in New Jersey? It will have two choices. In order to act responsibly, it can either duplicate, at great expense, the staff of existing agencies, or it can rely on those existing staffs, and operate without any staff of its own. In either case, the result would be a wasteful, unproductive duplication of effort and resources.

The new agency would result in a duplication of policy oversight also. In a “strong governor” state like New Jersey, we simply do not need a new agency to serve as a fail-safe device for policy error. The Governor and his staff perform that function.

The Governor oversees and is responsible for the policy decisions of the members of his cabinet and the independent agency heads that he appoints. The Governor, both individually and through his Counsel and staff, can and does respond in those

situations in which the regulated community or the affected public has been injured by an extreme error in policy judgement on the part of one of his appointees. The creation of a new layer of government to filter those complaints is wasteful, time consuming, confusing and potentially obstructive. The buck stops at the Governor's desk; it does now, and it will even if a regulatory czar slows down its progress.

The Study Commission has developed other -- now overshadowed -- recommendations that will tighten up and turn outward, toward the affected citizens, the work of the regulatory system. By recommending the creation of a regulatory czar, the Study Commission undermines the effectiveness and the force of the rest of its recommendations. This new agency recommended by the majority of the Study Commission will duplicate, complicate and make less efficient and responsive the regulatory system.

We have experts in rule making agencies. We shouldn't be required to duplicate that resource.

We have a centralized policy authority over executive actions. We shouldn't be required to duplicate that function.

We do not believe that efficiency and responsiveness can be derived from additional layers of government. The imposition of another stage of decision-making authority is not what is needed. What is needed is effective, responsive and communicative decision-making from the executive agencies currently in existence.

What is needed, and what is called for by the rule making "checklist" recommended by the Study Commission in recommendation III.1, is ministerial oversight. By ministerial oversight we mean, in this context, the review of regulatory proposals to ensure that the promulgating agency has taken the required steps -- that it has sent out the notices, held the hearings, supplied answers to required questions. We all agree that agencies should be required to plan, consult and justify. Ministerial oversight of these requirements -- oversight that does not interpose new policy-making authority -- can be performed by the Office of Administrative Law.

It makes sense to force agencies to set out the information required by the checklist. It also makes sense for the Office of Administrative Law to oversee that process, as it now oversees other technical and formal requirements of rulemaking. The objection raised by some members of the Study Commission that there would be a conflict of interest in the Office of Administrative Law if this requirement is added to its duties simply collapses if it is clearly understood that the Office of Administrative Law will be performing ministerial, not policy, review. At the beginning, the middle and the end of the process, the Office of Administrative Law would be reviewing a proposed rule to determine whether the agency had complied with the procedural and formal requirements of the Administrative Procedure Act. With its role so defined, absolutely no conflict of interest exists. The Office of Administrative Law does not have, and would not be given, the authority to rule on the merits or validity of a regulation.

We urge the development of regulatory policy be left to the agencies, policy review be left to the Governor, and ministerial review be left to the Office of Administrative Law.

The Study Commission was charged by the Legislature with recommending methods to eliminate "conflicting provisions and unnecessary duplication of costs and procedures" and with evaluating "the cost versus the benefit of the rules and regulations . . ." We oppose the recommendation to create a new layer of regulation by the creation of a regulatory agency that would generate and duplication at high cost and to New Jersey's detriment.

Attachment G

STATE WITNESSES

LIST OF PUBLIC WITNESSES

Meeting Date

Name and Organization

September 29, 1988

- **Thomas D. Carver**
Executive Director - Atlantic City Casino Association
- **Peter G. Sheridan**
V. P. Legal Affairs
Atlantic City Casino Association
- **Brad Stone**
President
Sands Hotel, Casino and Country Club

March 1, 1988

- **Sean Reilly**
Environmental Services
- **Betty Greitzer**
Super Market General
- **Helen Ryan**
Ryan Fuel
- **John Spinalli**
Heating Plumbing Contractor's Association
- **James Benton**
John Holtz
Oliver Papps
N.J. Petroleum Council
- **Michael Kornett**
J.F.K. Medical Center
- **Alan Pralgezer**
Building Contractors Association
- **Edwin Crowell**
Union Camp

**Meeting
Date**

**Name and
Organization**

April 5, 1988

- **Steve Vrabel**
N.J. Auto Body Association
- **Dan Wells**
Queen Victoria Guest House Cape May
- **Hal Bozarth**
N.J. Chemical Industry Council
- **Dick Anderson**
Bruce G. Siminoff
Commerce & Industry Association
- **Tom Anderson**
Hi-Tech Construction
- **Peter Madison**
Building Owners & Managers Association
- **Ellen Gulbinsky**
Authorities Association
- **Pat O'Keefe**
N.J. Builders Association
- **Carl Beck**
Business Council on the Reduction of
Federal Paperwork (BACFR)
- **Charles Tahney**
Livingston, Township
- **Vincent De Mauero**
Verona, Township

Attachment I

ENABLING LEGISLATION

(A 2082/P.L. 1987 ch. 130)

[THIRD OFFICIAL COPY REPRINT]

ASSEMBLY, No. 2082

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 20, 1986

By Assemblyman FRANKS and Assemblywoman DONOVAN

AN ACT creating a Study Commission on Regulatory Efficiency
in State Government and making an appropriation.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. The Legislature finds and declares that certain State Govern-
2 ment regulations are necessary and proper for the efficient en-
3 forcement of the regulatory affairs of the State, particularly those
4 which help reduce pollution, improve health, and ensure product
5 safety, but that government rules and regulations can often create
6 a costly financial burden on business and individuals. Analysts
7 have estimated an average business cost of \$19,000.00 associated
8 with compliance with federal regulations and \$5,000.00 associated
9 with compliance with state regulations in a typical state. Also,
10 that whenever excessive regulation occurs, it causes a profoundly
11 inefficient allocation of resources that often runs counter to the
12 social ends the regulatory process is designed to achieve; that it
13 should be the goal of State Government to lessen the burdens of
14 regulation without sacrificing the important public policy goals
15 that State agencies were formed to serve, and that the procedures
16 employed by State agencies in establishing rules and regulations
17 should be examined to ensure that administrative rules and regu-
18 lations are necessary, straightforward, nonduplicative, minimize
19 the costs of compliance, and adequately protect the public interest.

1 2. There is created a commission, to be known as the Study Com-
2 mission on Regulatory Efficiency, with a membership of ***[25]***
3 ****[26]**** *****[32]**** *****33***** members. The commission
4 shall consist of:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted May 5, 1986.

**—Assembly amendments adopted May 15, 1986.

***—Assembly amendments adopted June 19, 1986.

2 agencies and propose guidelines and make recommendations for
3 economic improvements and greater efficiency in rule-making pro-
4 cedures. The commission shall include a review of the following
5 in its study:

6 a. The State's system of processing the paper work of the regu-
7 latory functions of each agency to estimate duplication, promote
8 efficiency, and increase speed in the processing of paper work, with
9 consideration given to the feasibility of a centralized interagency
10 procedure for the acquisition of permits and licenses of various
11 types;

12 b. Rule-making procedures of other states for possible applica-
13 tion to this State;

14 c. The intra-agency procedures and criteria which lead to the
15 adoption of rules and regulations in an effort to establish standard
16 or a set of guidelines for rulemakers to measure the advisability
17 of proposed rules and regulations with the goals of:

18 (1) Eliminating conflicting provisions and unnecessary duplica-
19 tion of costs and procedures;

20 (2) Evaluating the cost versus the benefit of the rules and regu-
21 lations;

22 (3) Ensuring that the factual conclusions, upon which a pro-
23 posed regulation is based, are substantially supported in the
24 agency's record viewed as a whole with full attention given to
25 public comments in general and the comments of persons directly
26 affected in particular;

27 (4) Easing the business cost of compliance and filings required
28 by regulations; and

29 (5) Insuring the adequate protection of the public interest; and

30 d. The need for a regulatory oversight agency in the Depart-
31 ment of Commerce and Economic Development to review selected
32 regulations that affect business activity and ensure the periodic
33 review of all existing substantive regulations.

34 The commission shall report its findings, conclusions and recom-
35 mendations to the Governor and the Legislature not later than one
36 year after the organizational meeting of the commission, accom-
37 panying them with any legislative bills which it may desire to
38 recommend for adoption by the Legislature. The commission shall
39 expire 30 days after the issuance of its report.

1 6. The commission shall be entitled to call to its assistance and
2 avail itself of the services and assistance of such officials and
3 employees of the State and its political subdivisions and their
4 departments, board, bureaus, commissions, and agencies as it may

5 a. The *Attorney General, the State Treasurer, the Com-*
6 *missioner of Health, the Commissioner of Commerce and Economic*
7 *Development, the Commissioner of Environmental Protection, the*
8 *Commissioner of Community Affairs, the Commissioner of Insur-*
9 *ance, the Commissioner of Labor,* the Director of the Office of*
10 *Administrative Law, the Public Advocate, and the Director of the*
10A *Division of Consumer Affairs, or their designated representatives,*
10B *who shall be ex officio members;*

11 b. *Two members* of the Senate to be ap-
12 pointed by the President of the Senate, *not more than one of*
13 *whom shall be of the same political party;* and a *member*
13A *two members* of the General Assembly to be appointed by the
13B Speaker of the General Assembly, *not more than one of whom*
13C *shall be of the same political party;*

14 c. *Thirteen* *Seventeen* public members to be appointed
15 by the Governor *representing*, *with* *of whom 13 shall*
16 *be composed of* one representative from each of the fol-
16A lowing organizations: the National Federation of Independent
17 Business/New Jersey, the New Jersey AFL-CIO, the New Jersey
18 Business and Industry Association, the New Jersey State Chamber
19 of Commerce, the New Jersey Builders Association, the Society
20 for Environmental Economic Development, the North Jersey Com-
21 merce and Industry Association, the Alliance for Action, the
22 Council of Private Schools for Children with Special Needs, the
23 New Jersey Association of Non-Profit Homes for the Aging, the
24 New Jersey Hospital Association, the New Jersey Food Council,
24A the New Jersey Utilities Association; and

25 d. A chairman to be appointed by the Governor.

26 All appointments shall be made within 30 days after the effective
27 date of this act. Each member shall serve for the duration of the
28 commission. Vacancies in the membership shall be filled in the
29 same manner as the original appointments were made. Members
30 of the commission shall serve without compensation, but shall be
31 entitled to reimbursement for actual expenses necessarily incurred
32 in carrying out their duties as members of the commission.

1 3. The commission shall organize as soon as may be after the
2 appointment of its members and shall select a vice-chairman from
3 among its members and a secretary, who need not be a member of
4 the commission. All actions of the commission shall be authorized
5 by a majority vote of the total membership.

1 4. The commission shall review the "Administrative Procedure
2 Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.) and shall make
3 recommendations for its revision.

5 require and as may be available to it for its purposes and to em-
6 ploy such stenographic and clerical assistants and incur such trav-
7 eling and other miscellaneous expenses as it may deem necessary,
8 in order to perform its duties, and may expend any funds as may
9 be appropriated or otherwise made available to it for the purposes
10 of its study.

1 7. The commission may conduct public hearings in furtherance
2 of its general purposes at the place or places as it shall designate,
3 at which it may request the appearance of officials of any State
4 agency and solicit the testimony of interest groups and the general
5 public.

1 8. There is appropriated \$90,000.00 to the commission from the
2 General Fund to effectuate the purposes of this act.

1 9. This act shall take effect immediately and shall expire on the
2 30th day after the issuance of the commission's report.

STATE GOVERNMENT—GENERAL

St. Gov. Reg. Efficiency—Estab.

Establishes a study commission to review the efficiency of the
regulatory process in State Government and appropriates
\$90,000.00 for the commission's work.
